

STATEMENT OF CONSIDERATION RELATING TO

401 KAR 5:072 - Not Amended After Hearing

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division of Water

(1) A public hearing on 401 KAR 5:072, Concentrated Animal Feeding Operations, was held on June 29, 2000, at 6:30 p.m. Central Time, at the Madisonville Technology Center in Madisonville, Kentucky.

(2) The following people attended the public hearing or submitted written comments:

Name and Title

Affiliation

Brenda Alexander	Grower
Ken Alexander	Grower
Debby Allen	Kentuckians for the Commonwealth (KFTC)
Darryl Armstrong	Armstrong & Associates
Bob Arnold	
Terry Ashby	Perdue Farms
Elaine Atherton	Farmer
Phillip Atherton	Farmer
Charles Bates	Citizen
Edna Bates	Citizen
Betsy Bennett	Sierra Club
Valerie Bock	Kentucky Conservation Committee
Aaron D. Borntrager	Farmer
John Borntrager	Owner
Pamela Bratcher	Perdue Farms, Inc.
Douglas Brown	Poultry Grower, Tyson
Kris Brown	Murray State University
Joseph Bruce	Tyson Foods
Melinda Burden	
Truman D. Burden	
Larry L. Burmeister	University of Kentucky
Sharon Burton	Publisher, The Farmer's Price
Micah Bushey	Tyson Foods, Inc.
Vince Calloway	Tyson Foods, Inc.
Phil & Judy Carlisle	Poultry

Allen Chambers
Richard Coffey
Chris Creech
Susan Crosswait
Sue Dant
Joan Denton
Aloma Dew
Lee A. Dew
Henry Duncan
Sandra Dupree
Margie Durham
Richard Dutton
Ron Duvall
John & Mary Ann Ebelhar
Bernadine Edwards
Debbie Ellis
Charles W. Everley
Jenny Fain
Terry Fain
Tim Faulkner
Allen Franks
Rebeckah Freeman
Jackie Fugate
David Garrett
Brent Gay
Sam Gilkey
Nancy and Roger Grace
Hank Graddy
Guy Hardin
Doug & Linda Hartline
Patricia Hawkins
Tom Henry
Greg Henson

Daniel Herron
Morris Hill
Tony Holloway
Lynde Hughes
Michael Hughes
Chad Jones
Shane Joyner
David G. Jurgons
Paul Kauffman
Rita Kelley
Ella King
Josh Kirkland

Tyson Foods, Inc.
University of Kentucky
Perdue Farms
KFTC
MCCAFF
KFTC, Sierra Club
Sierra Club
Green River Watershed Watch
University of Kentucky
Citizen
Beautician, Farmer
Tyson Foods, Inc.
Cagle-Keystone
Farmers
MCAFF
Kentucky Soybean Association
Perdue Farms
Perdue Farms

Tyson Foods, Inc.
Citizen
KY Farm Bureau
Farmer
Farmer, Citizen
Tyson Foods, Inc.
The Messenger
Citizens
Attorney, Sierra Club
Take Back Kentucky
Farmers, Tyson Foods
Hopkins Fiscal Court
Farmer
McLean County Agent, University of
Kentucky

Tyson Foods, Inc.
KY Farm Bureau
Poultry
Tyson Foods, Inc.

Tyson Foods, Inc.
Poultry
Farmer
Grower, Tyson Foods, Inc.
Citizen
Pro-Poultry

Carole Knoblett
 Walter Koelm
 Faye Lear
 Lindenberger
 Ira Linville
 Dennis O. Liptrap
 John Lucas
 Christine Lyon-Woodburn
 Howard McGregor
 Howard McGregor
 Linda McGregor
 Jessie Mallory
 Eddie Melton
 Mr. & Mrs. Frederick Merida
 Tim Merryman
 Linda Moon
 Sam Moore
 Harold Murphy
 Patricia Murphy
 Alfred O'Reilly
 Mike Ovesen
 David A. Owen
 Robert G. Perry
 John Porter
 Jeff Power
 Kate Preskenis
 Christopher Rhodes
 Litle Rickerd
 Beverly Roberts
 Hunter H. Roberts
 Heather Roe Mahoney
 Joe & Neveleen Rogers
 Sue Anne Salmon
 Chris Settles
 Richie Shepherd
 Charles Shocklee
 John D. Shocklee
 Roger Shocklee
 Thurman Slaton
 Barbara Thomas
 Kelly Thurman
 Paul D. Tompkins
 R.C. Trunnell
 Mark Turner
 Redmon & Virginia Utley
 Judith Villines

KY Poultry Federation
 Citizen

 Messenger Enquirer
 KY Department of Agriculture
 IPKY
 Evansville IN Courier Press
 Citizen
 McGregor's Orchard
 McGregor's Orchard

 Farmer
 Citizens
 Tyson Foods, Inc.
 Citizen, Homeowner
 KY Farm Bureau
 Tyson Foods, Inc.
 Tyson Foods, Inc.
 Farmer

 Attorney, Cagle's-Keystone Foods LLC

 KFTC
 Tyson Foods, Inc.
 KFTC
 Tyson Foods, Inc.

 Citizen
 Democracy Resource Center

 Citizen

 Citizen
 Farmer
 Farmers
 Perdue Producer
 Farmer
 McLean Co. Citizens Against Factory Farms
 KY Milk Producers Association
 Poultry Farmer
 Home owner

 Citizens
 Stites and Harbison

Danny Vincent	
Tim Vincent	Grower
Glenn Walther	Farm Bureau
Eloise Waters	Perdue Farms
Barbara Weatherspoon	Farmer's wife
Dan Weatherspoon	Farmer
Mark Weathers	Tyson Foods
Wesley & Michelle	Growers
Karol Welch	Hopkins Co. First District Magistrate
Sue Whayne	
Andrea Whitaker	Polaris Associates Corporation
Mr. & Mrs. Jerry Whittedge	Poultry Farmer
Ann Wilkerson	KFTC
Jay Wilkerson	Citizen
Mark H. Williams	Kentucky Cattlemen's Association
Todd Wright	Tyson Foods
Jerry W. Bean	Citizen
Dorothy Campbell	Citizen
Irene Carlton	Citizen
John K. Chlada	Director of Environmental Services, Perdue
Shirley & Russell Crick	Citizen
Bridgette DeGraef	Citizen
Robert N. Elliston	Turfway Park LLC
Tom FitzGerald	Director, Kentucky Resources Council, Inc.
Patricia & Roger Gamble	Citizens
Roger Grace	Citizen
Emily Hughes	Citizen
Linda Lam	Citizen
Tammy Lamb	Citizen
Jean Long	Citizen
Bernie Miller	Citizen
Liz Natter	Director, Democracy Resource Center
Judith D. Petersen	Executive Director, Kentucky Waterways Alliance
Sara Shelton	Citizen
Charles Stanley	Citizen
Carolyn Stanley	Citizen
Ernest Stanley	Citizen
Lou Stanley	Citizen
Maye Stanley	Citizen
Randy Stanley	Citizen
Ricky Stanley	Citizen
Roger Stanley	Citizen
Wanda Stanley	Citizen
Judith Taylor	Citizen
	Keeneland Association, Inc.

David Van Bebber	Vice President and Director of Legal Services, Tyson Foods, Inc.
Polly H. Young	Citizen
Kevin Wiggins	Citizen
Brandy Wiggins	Citizen
Kim Douglas	Citizen
Bill Douglas	Citizen
Timothy Dulany	Citizen
Amanda Dulany	Citizen
Joe Dulany	Citizen
Rebecca Dulany	Citizen
Tom Curtsryl	Citizen
Bernice Dunevant	Citizen
Barbara Newsome	Citizen
Anita Curtsinger	Citizen
Melody Blount	Citizen
Gerald Orange	Citizen
Debbie Orange	Citizen
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O. Hawley	Citizen
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Rose Green	Citizen
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Katherine Ellegood	Citizen
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Jason Curtsinger	Citizen
Darren Higgins	Citizen
Krystal Higgins	Citizen
Judy Higgins	Citizen
James Wesley Higgins	Citizen
James D. Higgins	Citizen
Nancy Kaye Higgins	Citizen

Dottie Carter	Citizen
Truman Richards	Citizen
Bernice Rohrer	Citizen
Ronnie Rohrer	Citizen
Uma Richards	Citizen
Mary Ann Richard	Citizen
Melissa Cagle	Citizen
David M. Carter	Citizen
Christy Sharp	Citizen
Paul Hayden	Citizen
Tim Jack Wilson	Citizen
Tony Dodson	Citizen
Cathy Hayden	Citizen
Ronald B. Rixes	Citizen
Brian Rivers	Citizen
Peggy Rivers	Citizen
Ronald R. Rivers	Citizen
Tim Carter	Citizen
Sharon Carter	Citizen
Carl Brodley	Citizen
Jack Wilson, Director (Agency Representative)	Division of Water
Robert Ware, Assistant Director	Division of Water
Bruce Scott, KPDES Branch Manager	Division of Water
Don Hayes	Division of Water
Julie Duncan, Division Secretary	Division of Water
Sherry Pryor, Regulations Coordinator	Division of Water
Maleva Chamberlain	Division of Water
Brenda Childers	Division of Water
Lynette Koller, Court Reporter	Ohio Valley Reporting
Mark York	Natural Resources and Environmental Protection Cabinet

Summary Of Comments And Responses

(1) **Subject: Regulations Needed**

(a) Comment: Debby Allen

Dorothy Campbell
Susan Crosswait
Bridgette DeGraef
Aloma Dew, Sierra Club
Nancy and Roger Grace
Rick and Linda Lam
Jean Long
Hunter Roberts
Charles Stanley
Ann Wilkerson
Valerie Bach, Kentucky Conservation Committee
W.H. Graddy, Sierra Club

Regulations on concentrated animal feeding operations are needed and should be enforced. We support the Division of Water, the Cabinet, Secretary Bickford, and Governor Patton in the promulgation of these regulations.

(b) Response: The support is noted.

(2) **Subject: Regulations Needed**

(a) Comment: Dorothy Campbell

Faye Lear
Bernadine Edwards

Not only do we need regulations for future buildings, but also for existing ones.

(b) Response: The Cabinet recognizes the concerns expressed with respect to existing operations. While this proposed administrative regulation does not require existing structures to be moved, it does address air and water quality issues including all land application, for operations defined as a Concentrated Animal Feeding Operation (CAFO). In addition, all CAFOs must adhere to other existing regulatory requirements.

(3) **Subject: Regulations Needed**

(a) Comment: Sam Moore, Kentucky Farm Bureau

CAFOs should be regulated and permitted but we object to the Cabinet's current CAFO regulation.

(b) Response: The Cabinet agrees that operations defined as a CAFO should be permitted, but disagrees that the proposed administrative regulation is not necessary. In February 1998, the federal Clean Water Action Plan (CWAP) identified polluted runoff as the most important remaining source of water pollution. The Cabinet has reached a similar conclusion. The *1998 Kentucky Report to Congress on Water Quality* provides the Division of Water's most recent assessment of water quality conditions and trends. Agriculture continues to be a significant source of nonsupport of beneficial waterbody use. For those waters assessed in the 1998 report, agricultural nonpoint source pollution was the attributed cause of nonsupport in 984 miles of streams and 5,582 acres of lakes in Kentucky. The CWAP called for the development of a USDA-EPA unified national strategy to minimize the water quality and public health impacts of

animal feeding operations. This strategy was published on March 9, 1999 and includes the elements being implemented by the Cabinet in the proposed administrative regulation and the proposed CAFO general KPDES permits.

(4) Subject: Regulations Needed

(a) Comment: Judith D. Petersen, Kentucky Waterways Alliance

Karol Welch, Magistrate, 1st District, Hopkins County

We support the proposed regulations as an important step towards controlling these operations by requiring integrators to be jointly responsible for waste and water pollution problems arising from CAFOs. We strongly support the joint integrator liability clause and the controls on landspreading of waste and wastewater to prevent water pollution from phosphorus, nitrogen and metals, and to prevent nuisances. We also support the setbacks from property boundaries, streams, and wells but feel they should be stronger.

(b) Response: The Cabinet acknowledges the support. The Cabinet has chosen to not address property line setbacks, but rather to rely on setbacks from dwellings and other similar features in order to provide protection of human health and the environment.

(5) Subject: Regulations Needed

(a) Comment: Barbara Weatherspoon

Charles Bates

Dan Weatherspoon

Barbara Thomas

Please put a moratorium on CAFOs.

(b) Response: The Cabinet has not sought to place a moratorium on the construction of new and/or expanding CAFO operations given the current emergency administrative regulation that is in place. The intent of the emergency administrative regulation, and this proposed ordinary administrative regulation, is to address the human health and environmental concerns related to CAFO operations. As long as an appropriate CAFO regulatory program is in place, the agency does not view a moratorium as necessary.

(6) Subject: Regulations Needed

(a) Comment: Barbara Thomas

We have 140 chicken houses in the Beech Grove area. This has been under-regulated. The chicken houses should not have been brought in without regulations. I appreciate the regulations but they are too little. They're not strong enough. I have moved out of Beech Grove but if it follows me I've gained no ground. Please keep our water safe.

(b) Response: The Cabinet recognizes the concerns with respect to the poultry industry growth in Kentucky. See also response #(2).

(7) Subject: Regulations Needed

(a) Comment: W.H. Graddy, Sierra Club

In 1997 Kentucky looked like a prime target for industrial pork production. Fortunately, our Governor and the Secretary of this Cabinet responded, without any help from the General Assembly, and Kentucky has so far avoided the problems of North Carolina and Oklahoma. But we have remained a prime target for industrial poultry expansion, and we did not respond until

February, 2000. The Cabinet should read the Strategy and the Guidance carefully and implement it fully to help the farmers and the non-farmers in this state avoid problems.

The Sierra Club also supports the order of the Franklin Circuit Court from the bench on June 28, 2000, that would protect a landowner from penalties where he has not expanded his operation since February 13, 2000, and where he has filed an otherwise proper KPDES application but where the integrator has refused to sign. The Sierra Club believes that the integrator would be in violation of this regulation, not the landowner. Language should be added to the regulation to incorporate the order of that court.

(b) Response: The Cabinet has been seeking a regulatory program for CAFOs since mid-1997. See also response #(3). The agency will comply with any orders issued by the Franklin Circuit Court in the pending lawsuit.

(8) Subject: Regulations Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

The final rule should clarify that these are minimum standards and that local governments may apply tougher standards by zoning or public health ordinances.

(b) Response: The Cabinet agrees that the requirements in the proposed administrative regulation are minimum standards, and do not prohibit local jurisdictions from seeking to apply tougher standards by zoning or public health ordinances. An amendment to the proposed administrative regulation is not necessary.

(9) Subject: Regulations Impractical

(a) Comment: Truman Burden

These regulations are impractical to implement. Thank you to the Secretary of Agriculture, Billy Ray Smith, for his comments on these permanent regulations. We live close to two poultry houses and we do not have mice or health problems. If you have problems, seek resources other than these permanent regulations.

(b) Response: The Cabinet disagrees that the proposed administrative regulation is impractical to implement. The two poultry houses believed to be in question here may not be subject to the proposed administrative regulation since less than 1,000 animal units are confined.

(10) Subject: Regulations Not Needed

(a) Comment: Ira Linville, Kentucky Department of Agriculture

The Cabinet under the Clean Water Act already has the authority to address most of the issues, making the permanent regulation unnecessary. Enforcement actions can be taken if there is a discharge to waters of the United States. Case-by-case determinations can be made where discharges must be controlled. Permits can be required if there is a discharge. Corrective measures can be in the permit conditions to correct or prevent further violations. Kentucky now has the authority to address CAFOs through the KNDOP and the KPDES. The Agriculture Water Quality Act (AWQA), KRS 224.71-100 and 140, provides the vehicle for developing agriculture water quality plans and best management practices (BMPs) for animal waste management and utilization, including nutrient management. The Department of Agriculture has the responsibility for dead animal disposal under KRS 257.160. Incorporate the authority and responsibility of the AWQA to provide BMPs to protect the environment, including provisions and a protocol for corrective measures. Foster a good working relationship between the Cabinet,

the Department of Agriculture, the environmental community, and the regulated community to develop regulations that are fair, reasonable, and based on sound science and proper authorities.

(b) Response: The proposed administrative regulation is necessary to implement a federal mandate and also to provide protection for air and water quality at these sites. The Cabinet agrees that the existing KPDES administrative regulations give authority to permit CAFO operations, but disagrees that the proposed ordinary administrative regulation is not necessary. See response #(3).

The Agriculture Water Quality Act (AWQA) is a vital component of the CAFO program. However, independent of that statute, the Cabinet has responsibility pursuant to KRS 224.16-050(1) to administer the provisions of the Clean Water Act 33, U.S.C. 1251, *et seq.* The Agriculture Water Quality Act is not stringent enough to meet the minimum requirements of the federal Clean Water Act. It does not, for example, govern the issuance of NPDES permits required by the Clean Water Act. Thus relying on it alone would violate the provisions of the Clean Water Act found in 33 U.S.C. 1370.

The Cabinet agrees that the Department of Agriculture has responsibility for dead animal disposal pursuant to KRS 257.160. Finally, the Cabinet agrees that it is vital for the various interests to work collectively in addressing issues regarding CAFOs.

(11) Subject: Public Hearings

(a) Comment: Alfred O'Reilly

The process of these hearings allows faulty information, misrepresentations and lies.

(b) Response: The process for adopting administrative regulations is set out in KRS Chapter 13A. The Cabinet is obligated to respond to all views and opinions.

(12) Subject: Response to Comments

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

Our questions and comments made at the four hearings in March relating to the emergency regulation were not adequately addressed. At those hearings, approximately 83% of the speakers were from or supported the agricultural community. Over 58% of the total speakers at the March hearings were farmers who will be directly impacted by the regulation. The proposed regulation that will replace the emergency regulation contains no substantial changes.

(b) Response: The Cabinet has taken into account all questions and comments made at previous hearings by interested parties. The agency made some clarifying changes to the emergency administrative regulation in the notice of intent proposal. The agency does not however, promulgate administrative regulations based on the majority of comments that might be received. The overwhelming majority of comments at the June 2000 public hearing, for example, were in support of the proposed or a stronger administrative regulation. The agency is mandated to protect human health and the environment, which is what the proposed administrative regulation seeks to do.

(13) Subject: Support of Comments

(a) Comment: Kevin Wiggins
Brandy Wiggins
Kim Douglas
Bill Douglas
Timothy Dulany
Amanda Dulany

Joe Dulany
Rebecca Dulany
Tom Curtsryl
Bernice Dunevant
Barbara Newsome
Anita Curtsinger
Melody Blount
Gerald Orange
Debbie Orange
Flavious Burgess
Jerry Dan Burgess
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Jason Curtsinger
Darren Higgins
Krystal Higgins
Judy Higgins
James Wesley Higgins
James D. Higgins
Nancy Kaye Higgins
Dottie Carter
Truman Richards
Bernice Rohrer
Ronnie Rohrer
Uma Richards
Mary Ann Richard
Melissa Cagle
David M. Carter
Christy Sharp

Paul Hayden
Tim Jack Wilson
Tony Dodson
Cathy Hayden
Ronald B. Rixes
Brian Rivers
Peggy Rivers
Ronald R. Rivers
Tim Carter
Sharon Carter
Carl Brodley

We support the comments of Democracy Resource Center, Lexington, Ky. and Kentucky Resources Council, Frankfort, Ky. The regulations should at least be as strong as their comments concerning integrator liability, setbacks, density requirements, individual permits, etc.

(b) Response: The support is noted.

(14) Subject: Support of Comments

(a) Comment: Liz Natter, Democracy Resource Center
Heather Roe Mahoney, Democracy Resource Center

We strongly support the comments provided by members of the Hickman County Local Governance Project, the members of the Hopkins County chapter of Kentuckians for the Commonwealth, and the members of Community Farm Alliance.

(b) Response: The support is noted.

(15) Subject: Legal Authority

(a) Comment: John K. Chadla, Director of Environmental Services, Perdue
Sam Moore, Kentucky Farm Bureau
David L. Van Bebber, Vice President and Director of Legal Services,
Tyson

The Cabinet has no authority or jurisdiction to address odor and nuisance issues through the Clean Water Act's (CWA) pollutant discharge permitting program.

The Cabinet has no authority or jurisdiction to require persons to become co-permittees on a KPDES permit who are neither owners nor operators of a CAFO.

The Cabinet has no authority or jurisdiction to impose joint and several liability on a person for violations of a KPDES permit for a CAFO when the person is neither an owner nor an operator of the CAFO.

The Cabinet has no authority or jurisdiction to regulate poultry operations under the pollutant discharge permitting provisions of the CWA when the operation has neither a continuous overflow watering system nor a liquid manure system.

The Cabinet has no authority or jurisdiction to apply setbacks and siting criteria unrelated to a CAFO or to water quality through the pollutant discharge permitting provisions of the CWA.

The Cabinet has no authority to regulate nonpoint source agricultural stormwater discharge areas on farms with CAFO areas. By doing so violates the "no more stringent" provisions of KRS Chapters 224 and 13A.

The Cabinet does not have legal authority to promulgate the proposed regulation.

(b) Response: The Commonwealth of Kentucky administers the federal Clean Water Act pursuant to KRS 224.16-050(1). Most of the Cabinet's administrative regulations are taken directly from the Code of Federal Regulations and placed into the *Kentucky Administrative Regulations* with minor wording changes made only to accommodate KRS Chapter 13A. This is the authority delegated to the Cabinet pursuant to the federal Clean Water Act. This is a federal program and the Commonwealth must follow EPA's lead in this matter. The authority of the Cabinet is set forth in KRS 224.10-100. The Cabinet has the general authority to exercise supervision of administration and enforcement of KRS Chapter 224. The Cabinet specifically has the authority to issue, continue in effect, revoke, modify, suspend or deny under any conditions as the Cabinet may prescribe and require that applications be accompanied by plans, specifications and other information as the Cabinet deems necessary for permits to discharge into any waters of the Commonwealth. KRS 224.10-100(19).

The federal Clean Water Act itself does not define "owner" or "operator". However, the federal regulation, found at 40 CFR Section 122.2, does contain broad definitions of the terms "owner" and "operator". It is the position of EPA that persons who direct the activities of persons working at the CAFO either through contract or direct supervision or on-site participation in the facility, or who own the animals, or who specify how the animals are grown, fed, or medicated, meet the definitions of "owner" and "operator" and therefore must apply for a CAFO permit. See, *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations* August 6, 1999, Section 2.4.

EPA frequently publishes many guidance documents and has done so with the publication of the U.S. Department of Agriculture/U.S. Environmental Protection Agency *Unified National Strategy for Animal Feeding Operation*, March 9, 1999. The strategy notes at Section 1.11 that it is not a new regulation nor is it a substitute for existing federal regulations and does not impose any binding requirements on USDA, EPA and the states. It does, however, set forth EPA's interpretation of its currently existing law which is the law of the land and has been the law of the land for quite some time.

In the USDA/USEPA *Unified National Strategy for Animal Feeding Operations* issued March 9, 1999, EPA had this to say about integrator liability:

EPA believes that corporate entities that exercise substantial operational control over a CAFO should be co-permitted along with the CAFO owner/operator and will clarify this in CAFO permit guidance.

Strategic Issue No. 3 1.C.

In addition, in the *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations* issued August 6, 1999, EPA stated the following:

Corporate entities that exercise substantial operational control over a CAFO should be co-permitted along with the CAFO operator. Corporate entities that exercise such operational control over a CAFO are considered "operators" of the CAFO under the Clean Water Act (CWA).

Id. at Section 2.4.

EPA is requiring integrator liability because it considers integrators to be owners and operators. Furthermore, EPA interprets its current regulations as creating liability for the integrator and the proposed administrative regulation in that regard is not more stringent than federal law.

CAFOs are clearly defined in federal law as KPDES "point sources." 33 U.S.C. Section 1362 defines "point source" as follows:

The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharge and returns flows for irrigated agriculture.

33 U.S.C. Section 1362(14).

A CAFO meets the definition of point source. This includes the whole operation not just a particular discharge point. Congress did not define “concentrated animal feeding operations”, but EPA has done so in the Code of Federal Regulations. Any operation that meets that definition is a “point source”. It thus becomes a facility or activity regulated by the CWA. EPA considers anyone who owns animals at a CAFO or provides operational direction at the CAFO to be the owner or operator of the CAFO.

In addition, in the USDA / USEPA’s *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations*, August 6, 1999, EPA at Section 2.3.2 notes that poultry operations that remove dry litter waste from pens and stack it in areas exposed to rainfall may be considered to have established a crude liquid manure system, and are thus regulated.

It should also be noted that pursuant to KRS 224.10-100(19), the Cabinet may issue permits for construction of sewage systems. The Cabinet, therefore, has authority beyond the federal Clean Water Act to issue these individual regulations, and the regulations do not relate to federal Clean Water Act permits alone. Since the proposed administrative regulation is not solely based on the Cabinet’s authority under the Clean Water Act permit, the issue of whether or not it is “more stringent than” the Clean Water Act is not germane. The Cabinet has authority to control and regulate these facilities, apart from the federal Clean Water Act.

This proposed administrative regulation is also issued pursuant to the Cabinet’s authority under KRS 224.20-110 and 224.20-120, which give the Cabinet authority to regulate air pollution, including odor, and pursuant to KRS 224.10-100(5), which gives the Cabinet authority to provide for the prevention of odor problems.

(16) Subject: Legal Authority

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

Cite the specific Kentucky Administrative Regulation or Kentucky Revised Statute that gives the Cabinet authority to modify a water quality permitting program like KPDES to address air quality issues.

(b) Response: See response #(15).

(17) Subject: Legal Authority

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

In the Regulatory Impact Analysis, the Cabinet states that voluntary measures and local planning & zoning are still viable options for addressing odor and environmental matters. Why have these alternatives been rejected by the Cabinet?

(b) Response: These have not been rejected by the Cabinet, and may be addressed by local authorities on a local basis.

(18) Subject: Legal Authority

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

What is the procedure to remove the Kentucky Cabinet for Natural Resources and Environmental Protection as the issuing authority for NPDES permits and returning that authority back to the federal EPA?

(b) Response: A statutory change to KRS Chapter 224.

(19) Subject: Legal Authority

(a) Comment: W.H. Graddy, Sierra Club

The Cabinet has authority to include separate requirements to address odor and other nuisances and to protect water quality. The Unified National Strategy recognizes that and addresses odor and other contaminants along with water quality problems.

In the statutory authority for the regulation, include a reference to KRS 224.70-100, declaring the policy of the Commonwealth regarding water quality and the purposes of KRS 224 regarding water quality.

(b) Response: KRS 224.70-100 is certainly relevant and serves as statutory authority, but the Cabinet does not believe an amendment to the proposed administrative regulation is necessary.

(20) Subject: Legal Authority

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC

Preliminary suggestions of federal agencies as outlined in the USDA - USEPA Unified National Strategy for Animal Feeding Operations issued March 9, 1999, have not yet been adopted as part of the federal Clean Water Act NPDES permit program and cannot presently be used by USEPA in the manner proposed by the Division of Water. Since federal guidance documents on these matters are scheduled to be issued later this year, action by the Division of Water is premature and should not proceed at this time with promulgation of regulations.

(b) Response: See response #s(3) and (15).

(21) Subject: Legal Authority

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC

The Cabinet does not have the authority to address odor and non-water quality environmental matters through the issuance of the KPDES water discharge permit. These matters should utilize the air quality program or other appropriate regulatory authorities.

(b) Response: See response #s(3) and(15).

(22) Subject: Legal Authority

(a) Comment: Tom FitzGerald, Kentucky Resources Council

KRS 224.70 prohibits direct or indirect discharge of any pollutant or substance that would cause or contribute to pollution. This prohibition is broad enough to cover both point and nonpoint source discharges onto land which drains into water and which would cause an exceedance of water quality standards, since those standards apply to all sources of pollution, as was recognized in the state Agriculture Water Quality Plan. Additionally, a mandate to prevent pollution arises under the KPDES program. The prevention of nuisance associated with the placement of water material through land application of wastes and solids in wastewater must conform to the environmental performance standards of 401 KAR Chapters 47 and 48. Against the backdrop of a clear statutory mandate for protection of the land, air, and water resources from pollution, it is

clear that the permanent regulation must go beyond the emergency regulation.

(b) Response: We believe the Cabinet has appropriately exercised its statutory mandate in promulgating this proposed administrative regulation. It should be noted that CAFOs are considered point source discharges under the Clean Water Act. The statutory definition of “Solid Waste” (KRS 224.01-010(31)(a)) specifically exempts “... manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditioners ...” The environmental performance standards of 401 KAR 47:030 apply to solid waste sites or facilities. Therefore, a site where manure and crop residue are applied to the land as a fertilizer or soil conditioner is not subject to the environmental performance standards, since it would not be a solid waste site or facility. The Cabinet acknowledges that manure may be land-applied in such amounts that it would cease to be fertilizer or soil conditioner. The proposed administrative regulation addresses this possibility by imposing siting criteria. The KPDES program also addresses this possibility by requiring Comprehensive Nutrient Management Plans. These requirements are as a practical matter equally effective as the environmental performance standards of 401 KAR 47:030.

(23) Subject: Legal Authority

(a) Comment: Tom FitzGerald, Kentucky Resources Council

To the extent that the Cabinet establishes setbacks which restrict location, siting, or land application within certain distances of structures or receptors other than pollution-sensitive natural resources, the Council recommends that the authority of the Cabinet under the solid waste statutes be invoked to support those setbacks, and that the setbacks be revised to properly protect the rights of third parties.

(b) Response: The Cabinet considers its authority to enforce CWA requirements, regulate sewer systems and regulate air and water pollution in the Commonwealth to be sufficient to support setbacks. There is no conflict with the proposed administrative regulation and 401 KAR Chapter 47. Temporary storage of litter prior to land application is allowed as a permit-by-rule under 401 KAR 47:150. Specifically, the proposed administrative regulation allows “waste piles” that are solid wastes generated in the normal conduct of business to exist without being required to obtain written approval from the Cabinet. However, activities that fall under the permit-by-rule provision must comply with the environmental performance standards of 401 KAR 47:030 and cannot present a threat to human health or the environment. The permit-by-rule regulation does not preclude the Cabinet from imposing management practices for specific wastes when the Cabinet determines a potential for environmental harm exists. See also, 401 KAR 30:020, Section 4 with respect to stringency of other regulations when potential contradictions to arise.

As a result, the requirement for permanent litter storage at an operation defined as a CAFO is an acceptable management practice. In addition, the requirement to provide temporary storage for manure stockpiled on sites not defined as a CAFO, are likewise acceptable management practices. Whether off-site storage is subject to provisions beyond the permit-by-rule provisions of 401 KAR Chapters 47 and 48 is determined on a case by case basis.

See response #(22).

(24) Subject: Stricter than Federal

(a) Comment: Dennis Liptrap, IPKY

I asked at the last hearing about the KNDOP permit that we have operated under for nearly 25 years is equivalent to the NPDES permit issued by EPA. Your response was that it was not,

however, the application and instructions indicate that I have to provide more information to the Cabinet to secure a KNDOP permit than I do to secure an NPDES permit. Please document the differences that exist or the deficiencies in the KNDOP permit.

(b) Response: KNDOP permits are issued for sewage system structures such as lagoons pursuant to KRS 224.10-100(19). In general, KNDOP permits do not cover all facilities covered by the proposed administrative regulation if those facilities do not have sewage system structures as defined by KRS 224.01-010(25) such as poultry facilities without a continuous overflow watering system or a liquid manure system.

See response #s (3) and (15).

(25) Subject: Stricter than Federal

(a) Comment: Kelly Thurman, Kentucky Farm Bureau and Kentucky Milk Producers Association

The proposed regulation goes beyond EPA's strategy by requiring setbacks and co-permitting or integrator liability for a CAFO. These regulations are extremely stringent and go further than necessary to prevent water pollution. Setbacks are not designed to address water quality; they are an effort to abate odors. Co-permitting could affect farmers who raise heifers for others or dairymen who lease cows.

(b) Response: See response #s (3) and (15).

(26) Subject: Stricter than Federal

(a) Comment: Rebeckah Freeman, Kentucky Farm Bureau Federation

You miscomprehend EPA's position stated in the Strategy and EPA's guidance document on what constitutes substantial operational control. The Draft Guidance never says that someone who "owns the animals" and has no supervision or other responsibility for the facility and its waste handling activities is nonetheless an operator of a CAFO for NPDES permitting purposes. To the contrary, the Draft Guidance clearly states that determinations as to whether integrators should be considered operators should be made on a case-by-case basis. Nowhere in the Draft Guidance does EPA establish a strict liability or irrebutable presumption rule for integrator liability as your regulation does. Moreover, the Cabinet is not authorized by any statute to create a liability out of whole cloth as this regulation does. Your regulation is more stringent than the federal regulations, statutes, and guidance (which has no legal effect).

(b) Response: See response #(15). The proposed administrative regulation is consistent with federal law on integrator liability.

(27) Subject: Stricter than Federal

(a) Comment: Rebeckah Freeman, Kentucky Farm Bureau Federation

The Cabinet has also exceeded its authority by promulgating siting criteria in this regulation. The Cabinet has attempted to address nuisance and odor issues that are not within its jurisdiction. The Cabinet has no land-use planning jurisdiction. Moreover, through your overly-broad interpretation of the definition of a CAFO (reaching crop areas owned by the owner of the CAFO area) and your land application siting criteria, you are attempting to regulate nonpoint source areas expressly exempted from NPDES permitting for agricultural stormwater areas. The Cabinet has acted outside its jurisdiction and contrary to corresponding federal statutes and regulations as well as Kentucky statutes.

(b) Response: See response #(15).

(28) Subject: Stricter than Federal

(a) Comment: Ira Linville, Kentucky Department of Agriculture

Federal regulations do not deem land application areas to be point sources, thus any runoff could be considered a nonpoint source and not subject to the KPDES permit requirements. Federal law does not specify whether the permit should be a general or individual permit. The Cabinet is using the poultry number of 100,000 chickens without the further qualification in federal law, that the 100,000 laying hens or broilers have continuous overflow watering systems or 30,000 laying hens or broilers with a liquid waste management system for poultry to be included in the permit. Setbacks and odor are included in the proposed regulation; odor is an air quality issue and is not regulated by the Clean Water Act. Setbacks from facilities or land application areas that are based on odors rather than water quality protection do not have sufficient NPDES authority. EPA is encouraging states to address these issues as well as integrator liability without due process for rulemaking. Withdraw the proposed regulation and follow the normal process for promulgating regulations after the U.S. EPA has revised the Federal effluent limitation guidelines and regulations for CAFOs. Comply with KRS 13A.120 by making any regulation no more stringent than Federal law or regulation. Take no action on co-permitting or integrator liability until such time that EPA has resolved the issue at the national level.

(b) Response: See response #(15). In addition, in the USDA / USEPA's *Draft Guidance Manual and Examples of NPDES Permits for Concentrated Animal Feeding Operations*, August 6, 1999, EPA at Section 2.3.2 notes that poultry operations that remove dry litter waste from pens and stack it in areas exposed to rainfall may be considered to have established a crude liquid manure system.

(29) Subject: Stricter than Federal

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC

State-issued KPDES permits can impose no more stringent requirements than would a federally-issued NPDES permit. The promulgation of 401 KAR 5:072 would result in the issuance of KPDES permits for poultry CAFOs that would be more stringent than federally-issued NPDES permits in several respects including joint and several liability for owners and operators, facility siting, and permanent litter storage.

(b) Response: See response #(15).

(30) Subject: Court Decisions

(a) Comment: W. H. Graddy, Attorney, Cumberland Chapter of the Sierra Club

Last year, the U.S. District court found dairies with 5,250 dairy cows to be CAFOs and were strictly liable for violations of the Clean Water Act. In North Carolina, a U.S. District Judge found that Murphy Farms, as the operator, was a CAFO along with the actual farm owner. The U.S. Court of Appeals made it clear that a point source that uses land application to dispose of waste can be regulated as part of the NPDES requirement, holding: "the existence of uniform national effluent limitations is not a necessary precondition for incorporating into the NPDES program pollution from agricultural, silviculture and storm water runoff point sources". The Georgia Supreme Court recently ruled in favor of residential property owners within one half mile of a proposed swine feeding operation, to prohibit the construction. This supports the finding that setbacks are needed to prevent nuisance. Other recent cases support these findings.

(b) Response: The Cabinet is aware of these court decisions.

(31) Subject: Applicability

(a) Comment: Robert N. Elliston, Turfway Park

We maintain in excess of 500 horses for a period greater than 45 days in a 12-month period. Our facility, which has about 950 stalls, is open from approximately July 10 to May 1 each year. In the absence of clear exclusion, we are concerned that we will be required to comply with the regulation, which seeks to “co-permit” all persons who own these horses or direct the manner in which they are housed or fed. For 1999, we had 126 trainers who maintained horses and multiple owners of the horses. Would each of these trainers and owners be required to maintain permits? If so, this would create a competitive disadvantage for trainers and owners to keep their horses in Kentucky. We cannot find a single complaint that our facility was creating a health hazard and we mitigate any potential water quality problems. 401 KAR 5:072 is a redundant regulatory requirement, will increase costs, and will provide no additional benefit to the public.

(b) Response: Whether this or any other operation is deemed a CAFO requires an investigation beyond the scope of this document. However, the siting criteria, including setbacks, in the proposed administrative regulation address poultry, swine, beef, and dairy CAFOs.

(32) Subject: Applicability

(a) Comment: Judith Taylor, Keeneland Association, Inc.

We have serious concerns with regard to being included in this regulation. Our understanding of this regulation is that we would be required to obtain a KPDES permit and that every owner, trainer, consignor, buyer, and seller would become a co-permittee and liable for any violations. We estimate the number of co-permittees for our facility to be 11,195. Please clarify your intent and objectives. We ask that you propose language that would exclude us from this regulation.

(b) Response: See response #(31).

(33) Subject: Applicability

(a) Comment: Greg Henson, Agriculture and Natural Resources County Extension Agent, McLean County, Kentucky

Regarding the CAFO definition, the 1,000 head of beef cattle will contain about 1.1 million pounds on the day of slaughter; the 2,500 head of swine will contain 600,000 pounds and the 100,000 broilers will weigh 500,000 pounds. A pound of animal, whether it be calf, hog, chicken, or human, generates about the same amount of waste. Why, then, does the beef feedlot get to generate twice the waste that a hog or chicken farm does?

Production of waste at an animal feeding operation is determined by the number, size, and feeding regime of the animals. Application of waste to cropland is determined by the nutrient content of the waste and nutrient needs of the crop. The regulation does not address how manure from larger numbers of animals differs from that from smaller numbers of animals when it is applied to cropland on the basis of nutrient content and crop needs. More manure simply requires more acres and bigger trucks.

(b) Response: The determination of an animal unit was established by EPA and is incorporated into the federal NPDES regulations. Kentucky has promulgated language identical to the federal rules. In addition, the Natural Resources Conservation Service (NRCS) utilizes the same animal unit designations as EPA. Kentucky has not changed these definitions.

As it relates to waste production, the term “animal unit” is intended to represent a measure of waste production. Typically, baselines are made with respect to a given parameter such as

nitrogen, phosphorous, Biochemical Oxygen Demand, or some other constituent. In that regard, a calf, hog, chicken or human does not generate the same amount of waste pound for pound as the comment suggests. The statement that a beef feedlot can generate twice the waste that a hog or chicken farm produces therefore, is inaccurate.

The Cabinet agrees that the amount of waste produced by an operation is dependent upon the number, size and feeding regime of the animals. Many smaller operations that are not CAFOs are currently permitted under the state operational permit program, Kentucky No Discharge Operational Permit (KNDOP). In addition, for all farms greater than 10 acres in size, the AWQA would apply to those operations. The proposed ordinary administrative regulation only addresses those large operations defined as CAFOs. In all cases, the manner in which manure must be handled should be substantially the same from an agronomic and environmental perspective.

(34) Subject: Applicability

(a) Comment: Sam Moore, Kentucky Farm Bureau

These regulations can be enforced against cattle, swine, poultry, dairy, and horse operations through Cabinet designation and on-farm expansion.

(b) Response: State and federal regulatory authority does exist to designate an animal feeding operation as a CAFO where appropriate. The proposed ordinary administrative regulation does not amend that existing regulatory authority.

(35) Subject: Applicability

(a) Comment: Rebeckah Freeman, Kentucky Farm Bureau Federation

You have placed the entire farming community in a state of uncertainty by advising some sectors who would fall within the clear terms of the regulation if they continue to operate as planned and previously allowed, that you do not intend to pursue enforcement of the regulation against them. If you truly do not intend to enforce this regulation against some sectors while enforcing it against others, you should specifically exempt the former sectors.

(b) Response: Operations defined as CAFOs will be governed by the proposed ordinary administrative regulation, as well as by other existing administrative regulations.

(36) Subject: Applicability

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

Why is there a difference between storing manure on a CAFO versus storing manure on other farms?

(b) Response: Federal law regulates CAFOs. The proposed ordinary administrative regulation only deals with operations defined as a CAFO. That does not mean that operations not otherwise so defined do not have environmental concerns. See response #(33). The primary difference between a large operation defined as a CAFO and a smaller operation is the volume of manure generated. To reiterate however, this is not meant to imply that smaller operations do not cause environmental concerns. Rather, this proposed administrative regulation only addresses those large operations defined as a CAFO.

(37) Subject: Applicability

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

Site the Kentucky Revised Statute or Kentucky Administrative Regulation that indicates that 100,000 broilers or layers without either a continuous overflow watering system or a liquid

manure system equals 1,000 animal units. Please indicate the number of CAFOs with 100,000 broiler or layers with continuous overflow watering systems or that have a liquid manure system.

In the instructions of KPDES Form B it states that a permit is required if a broiler or layer operation has a continuous overflow watering systems or a liquid manure system. Does this mean that a KPDES permit is not required of a broiler or layer operation that has no liquid manure handling system or continuous overflow watering?

(b) Response: The KPDES administrative regulations are essentially identical to the federal NPDES regulations. The proposed ordinary administrative regulation does not change this definition. The Cabinet will utilize these definitions in determining whether an operation is or isn't a CAFO. With respect to how many CAFOs with 100,000 broiler or layers with continuous overflow watering systems or a liquid manure system, the agency does not have that information. The agency only has information indicating the number of broilers or layers believed to be confined. Any determination on which of these operations are CAFOs will occur during implementation of the KPDES program. As it relates to KPDES Form B, the agency would reiterate that the federal definitions for a CAFO will be utilized in determining whether an operation will need to obtain a KPDES permit.

(38) Subject: Agriculture Water Quality Authority

(a) Comment: Kelly Thurman, Kentucky Farm Bureau and Kentucky Milk Producers Association

We support total implementation of the Kentucky Agriculture Water Quality Authority and its Best Management Practices (BMPs) which allow producers to tailor site specific solutions to each farm's environmental situation.

(b) Response: See response #s(10) and (15).

(39) Subject: Agriculture Water Quality Authority

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC

A reasonable and effective program to regulate the environmental effects of poultry CAFOs is far more likely to be achieved through implementation of site-specific agricultural water quality plans as approved by the Kentucky General Assembly rather than through imposition of KPDES permit conditions.

(b) Response: See response #s(10) and (15).

(40) Subject: Agriculture Water Quality Plan / Comprehensive Nutrient Management Plan

(a) Comment: Tom FitzGerald, Kentucky Resources Council

The development or upgrading of a comprehensive nutrient management plan (CNMP) needs to be one of the first things that is considered for those that do have the Agriculture Water Quality Plans in place. The CNMP should be developed by the Natural Resource Conservation Service (NRCS) or other agronomic professional and required to be submitted to the Cabinet for review in order to assure compliance with the KPDES program, DAQ requirements, and solid waste permit-by-rule requirement that beneficial use of waste nutrients not result in a nuisance. CNMP requirements should be outlined in detail and, once approved, incorporated as enforceable requirements of permits. The CNMP should require: a general prohibition against creation of a nuisance or water pollution; analysis of the suitability of the land for land application, including evaluation of soil and subsoil permeabilities; potentiometric mapping and identification of

aquifers; evaluation of vulnerability of groundwater resources; soil slope, erodability, land use of proposed disposal site and surrounding land uses, existence of water withdrawals downstream of proposed site; loading and cycling of nitrogen and phosphorus; limitations on application of manure or disposal of wastewaters based on soil, slope and composition of wastes; prohibition of spreading or spray irrigation near areas of influence of sinkholes, wetlands, groundwater recharge areas, in proximity to surface waters, water wells, canals; buffer strips by all intermittent and perennial streams; complete chemical characterization of proposed wastes and wastewaters; copies of all necessary recorded manure easement agreements; a manure disposal plan with daily and annual limits of animal waste that will be land-applied and the number of acres that have been designated to receive this waste, and shall also indicate how all other wastes generated by the facility will be managed to prevent pollution and avoid creation of nuisances; hourly application rates should be controlled and must uniformly be less than soil infiltration rates, to prevent contaminated runoff; crop yield goals and plant uptake of nutrients must be matched; limits on application for nitrogen and phosphorus, and for prevention of accumulations of toxic concentrations of metals; appropriate limits, compliance with which must be documented by periodic soil tests, on individual and lifetime applications of manures, sludges and wastewaters for all potential pollutants of concern from an environmental or public health standpoint, including metals, copper, zinc, nitrates, phosphorus, antibiotics, and enteric pathogens, roundworms, viruses and other biological contaminants of concern; evaluation should also consider the partitioning of the nutrients, identifying the fraction that will leach, volatilize, denitrify, or be taken up by the plants; management of manure, wastes and wastewaters must address the months when land application is inappropriate.

(b) Response: The Cabinet agrees with this comment. The agency anticipates delays in producers being able to locate and retain qualified assistance in the preparation of the CNMPs. Therefore, while requiring the basic Agricultural BMP plan right away (to provide a continuing level of protection), a delayed requirement for the CNMPs was considered necessary. This will be discussed further within the draft KPDES general permits response to comments.

(41) Subject: Cabinet Expertise

(a) Comment: Greg Henson, Agriculture and Natural Resources County Extension Agent, McLean County, Kentucky

Has anyone in the natural resources cabinet ever been on a livestock farm?

(b) Response: Yes. In addition, many individuals responsible for developing and implementing the proposed administrative regulation are farmers as well as employees of the Cabinet.

(42) Subject: Cost of Permit

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

Give an accounting of what the \$1,200 KPDES permit fee and the \$240 application fee will be used for, listing specific items of expenditure and the related costs.

(b) Response: The permit fees for individual permits are required by statute, KRS 224.70-120. All permit fee dollars are sent to the "General Fund" for overall state government programs. It should be noted that general KPDES permits do not have a permit fee associated with them at present. The agency is considering the issuance of general permits to existing CAFO operations, with individual permits to new and/or expanding operations defined as a CAFO. The amount of

permit fee dollars generated from the issuance of these permits is significantly less than that required to effectively implement the program.

(43) Subject: Cost of Permit

(a) Comment: Tom FitzGerald, Kentucky Resources Council, Inc.

Permit fees should be imposed in a tiered manner based on the size of the proposed operations (i.e. per number of animal units or affected area).

(b) Response: See response #(42). Permit fees are set out in KRS 224.70-120 as enacted by the legislature. Kentucky's permit fees have not been revised since 1990, and are generally well below that of surrounding states.

(44) Subject: Threat to Environment and Public Health

(a) Comment: Dorothy Campbell
Bridgette DeGraef
Jean Long
Linda McGregor
Sue Anne Salmon

The smell from chicken houses is rotten. Exhaust fans pull out feathers, bacteria, and flies. Flies and mosquitoes swarm. Mice have overpopulated. The mice eat the chicken feed and when the chickens are taken away to the processor, the mice are left to starve and have been observed eating each other. Snakes are also a problem. The odor should be controlled. Mice and snakes should be controlled, and regular inspections and follow ups with neighboring landowners should be made.

(b) Response: With regard to mice or other rodent infestation problems, individuals should contact the Department of Agriculture, Division of Pests & Weeds (502-575-7162). For health concerns related to mice or other rodents, individuals should contact the Cabinet for Health Services, Department for Public Health (502-564-4856), or the local health department in their area. The proposed ordinary administrative regulation is designed to address odor concerns via siting criteria, including setbacks.

(45) Subject: Threat to Environment and Public Health

(a) Comment: Lee Dew, Kentucky Wesleyan College & Watershed Watch
Hunter Roberts
Sara Shelton
Guy Hardin, State Property Rights Committee

We are concerned with the potential impact of large-scale poultry operations. Bacteria-loaded birds and eggs, financially strapped farmers, and polluted waterways result from confinement poultry operations. Water analysis from a tributary of Obion Creek shows 260,000 colonies of fecal coliform per 100 ml. 2,000 colonies per ml is unsafe for body contact. This is a threat to immediate neighbors of the chicken operator near whose operation this sample was obtained as well as the operator and his family.

(b) Response: The proposed ordinary administrative regulation is designed to address water quality concerns related to poultry CAFOs. This includes high fecal coliform counts that can be attributed to poultry CAFOs.

(46) Subject: Threat to Environment and Public Health

(a) Comment: Sue Anne Salmon

Western Kentucky towns and counties are experiencing very frequent boil water advisories. Hantavirus, carried by mice, infects almost one-fourth of the deer mice in one western state. Last summer in New York state, seven people died from mosquito bites carrying the West Nile Virus. Bacteria are becoming resistant to antibiotics due to the great quantities of these drugs entering our food supply from factory farm animals. I hope the corporate integrator liability will apply to health problems as well as environmental problems.

(b) Response: This proposed administrative regulation does not directly address diseases carried by mice or mosquito bites due to CAFOs. However, one of the anticipated outcomes should be a reduction in disease vectors (like mice and mosquitoes) due to the siting criteria. Health concerns should be directed to the Cabinet for Health Services or the local health department. See response #(44).

(47) Subject: Threat to Environment and Public Health

(a) Comment: Dan Weatherspoon

Livestock antibiotics threaten our health.

(b) Response: See response #(46).

(48) Subject: Threat to Environment and Public Health

(a) Comment: Roger Gamble

Patricia Gamble

Natalie Gamble

Brittany Gamble

Nancy and Roger Grace

Faye Lear

Jean Long

Bernie Miller

Linda McGregor

Ella King

Chicken and hog houses threaten our pure fresh water and pollute the air with the smell of their waste. Uncovered hills of chicken waste attract hundreds of thousands of flies and mice. Chicken and hog waste could possibly get into our drinking water. Mosquitoes are already a big problem and they are likely to carry diseases. People, including school children, can not enjoy a fresh morning's air and can't inhale without gagging or coughing due to the smell. People do not like the smell and some people might get sick.

(b) Response: See response #s(44) through (46).

(49) Subject: Threat to Environment and Public Health

(a) Comment: Faye Lear

Linda McGregor

Hunter Roberts

People have experienced health problems such as respiratory problems, allergies, intestinal parasites, and mouse and bug bites since the large scale chicken operations have moved in. Ms. Roberts and her medical doctor consider her respiratory problems a result of the fine feathers and dust from the poultry operation. We have the right to breathe fresh air.

(b) Response: See response #s(44) through (46).

(50) Subject: Threat to Environment and Public Health

(a) Comment: Walter Koelm

My fiancée and I caught 80 mice in our trailer in two days. They caused a lot of damage to the trailer. My fiancée's son was diagnosed with a parasite in his stomach. Without these regulations the public has no rights.

(b) Response: See response #s(44) through (46).

(51) Subject: Threat to Environment and Public Health

(a) Comment: Linda Moon

My family lives next to chicken houses. We caught 80 mice in two days in our home. The smell is nauseating. Mice ate our crackers, cereal, chips, and bread in one night. We can not afford to continuously buy food. When I put the food in containers, the mice started eating each other. My five year old child could not watch TV without mice nibbling on his ankles. One ran underneath my shirt; they are not afraid of people. I could not sleep for worrying that the mice would get in the bed with my two children. The mice chewed holes in my floors. My son and I got stomach cramps, diarrhea, nausea, and we had a sore on our mouths that would not go away. We went to the doctor and my son had parasites in his intestines. Where are the children's rights? Should families have to sacrifice a safe and healthy environment for the economic benefit of others?

(b) Response: See response #s(44) through (46).

(52) Subject: Threat to Environment and Public Health

(a) Comment: Howard McGregor

My neighbor's eight month old baby was sick at it's stomach, had diarrhea, and brown spots all over its face. She said she has to stay up nights to be sure that the mice don't bite her baby.

(b) Response: See response #s(44) through (46).

(53) Subject: Threat to Environment and Public Health

(a) Comment: Charles Stanley

Green flies may carry bacteria and viruses from hog waste, and they swarm by the thousands into neighbors' yards, making outdoor activities impossible. The flies are on windows, in cars, on food, pets, and children. The flies bite humans, creating a health hazard. The hog smell engulfs our yards and burns our eyes and noses. When it rains hog waste lagoons overflow and pollute our waters. Unregulated hog waste can set the stage for a cholera outbreak.

(b) Response: See response #s(44) through (46).

(54) Subject: Threat to Environment and Public Health

(a) Comment: Dan Weatherspoon

The stink and polluted air is throughout our house. We are concerned about pollution of our well water.

(b) Response: See response #s(44) through (46).

(55) Subject: Threat to Environment and Public Health

(a) Comment: Karol Welch, Hopkins County 1st District Magistrate
Parvin R. Gibbs, Hopkins County Emergency Management
Jerry Bean & family

Shirley & Russell Crick & family
Ricky Stanley & family
Irene Carlton & family
Lou & Roger Stanley & family
Carolyn & Ernest Stanley & family
Wanda & Randy Stanley
Ricky & Maye Stanley
Roger & Patricia Gamble & family
Charles Stanley & family
Rick & Linda Lam & family
Margie Durham
Tammy Lamb & family
John & Linda McGregor
Willie & Karol Welch
Nathan & Rebecca Welch

Western Kentucky has had an explosion in animal factories in recent months. In less than two years, Hopkins County has had an increase in chicken production from the hundreds to the millions. There is a county plan for the feeding and disposal of animals during an emergency, however, a cross reference with another plan, like maybe North Carolina after flooding last year, would be most helpful. Mr. Gibbs stated in a letter to KyDEM that a briefing for Hopkins and surrounding counties would help to get on top of the situation and help to prevent a catastrophe.

(b) Response: The agency supports and encourages the planning efforts made by Hopkins County to address any potential emergency situation that might arise as it relates to large-scale animal feeding operations.

(56) Subject: Threat to Environment and Public Health

(a) Comment: Shirley & Russell Crick & family
Ricky Stanley & family
Irene Carlton & family
Lou & Roger Stanley & family
Carolyn & Ernest Stanley & family
Wanda & Randy Stanley
Ricky & Maye Stanley

The chicken smell, gases and unhealthy pollution are terrible. We have chicken houses on one side of us and hog parlors on the other. The stifling chicken smell woke us up in the night. We had to buy an air conditioner with little income. One daughter was sick and went to the doctor. He said it could have been caused from the smell of the chicken pollution. It contaminates our water and the air we breathe. Please take action and do something about this matter.

(b) Response: See response #s(44) through (46).

(57) Subject: Threat to Environment and Public Health

(a) Comment: Karol Welch, Hopkins County 1st District Magistrate
Barbara Thomas

A local family caught 80 mice in their small trailer in two days. People are getting sick.

(b) Response: See response #s(44) through (46).

(58) Subject: Threat to Environment and Public Health

(a) Comment: Polly H. Young

Chicken and swine operations jeopardize the quality of every Hopkins Countian's environment. The runoff will affect our groundwater for generations if not carefully and properly managed. We will be affected by the communicable diseases that might be spread by flies and pests.

(b) Response: See response #s(44) through (46).

(59) Subject: Threat to Environment and Public Health

(a) Comment: Alfred O'Reilly

I apologize to Mr. McGregor if I caused you any grief. The first I heard of a problem was on the media. I have no problem with a couple of neighbors or newcomers here because the problem doesn't exist. Only chickens and other food chain animals have rights. Rodents and vermin are God's creatures too but they are treated differently. Tyson has helped me implement any kind of program I need and they give me advice.

(b) Response: The comment is noted.

(60) Subject: Threat to Environment and Public Health

(a) Comment: Jackie Fugate

I don't have a problem with Mr. O'Reilly, I have a problem with his chicken houses; he is not controlling them. We had problems with the mice, flies and the smell. 850 tons of manure are piled up behind his chicken houses next to the water that leads to the lake. Chicken houses should be kept neat and clean.

(b) Response: The comment is noted.

(61) Subject: Threat to Environment and Public Health

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

List specific cases of poultry CAFOs directly impacting streams, lakes, or water bodies of Kentucky. Please site all incidences in which taxpayer money or state funds were used to clean up a poultry operation in Kentucky.

(b) Response: See response #(3) and the comments received from concerned citizens summarized in this document for examples of environmental impacts from CAFOs. The proposed administrative regulation is designed to minimize or prevent the need for spending taxpayer money in cleaning up CAFOs.

(62) Subject: Individual v. General Permits

(a) Comment: Susan Crosswait

Linda McGregor

Hunter Roberts

Ann Wilkerson

Liz Natter, Democracy Resource Center

Heather Roe Mahoney, Democracy Resource Center

Require individual permits for all CAFOs. Grant neighbors a voice. Often those who live near a site have knowledge of the site that others would not, thus preventing problems.

(b) Response: The response to comments and issuance of final KPDES General Permits is being developed. As a part of that effort, the issue of when general or individual KPDES permits

will be required will be addressed. The proposed administrative regulation does not amend the existing administrative regulations on general and individual KPDES permits.

(63) Subject: Individual v. General Permits

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC
401 KAR 5:072 Section 2(1) should be revised to reflect the Division's strategy for regulation of CAFOs through general KPDES permits since persons seeking coverage under a general KPDES permit do not sign an application for a KPDES permit but instead they submit a Notice of Intent to come within the scope of the general permit.

(b) Response: The term "application" in 401 KAR 5:072, Section 2(1) represents both an individual permit application, as well as a general permit Notice of Intent / application. As such, no revision to the proposed administrative regulation is deemed necessary.

(64) Subject: Individual v. General Permits

(a) Comment: Tom FitzGerald, Kentucky Resources Council, Inc.
The proposed general KPDES permit lacks public notification of the proposed CAFO, depriving neighbors of the opportunity to present information and increasing local opposition and discomfort concerning such operations.

(b) Response: See response #(62).

(65) Subject: Owner / Operator Liability

(a) Comment: Dennis Liptrap, IPKY
Have other options besides co-permitting been considered to ensure funding for remediation of any damage caused by livestock wastes? Have you considered setting up a "Superfund" or self-insurance fund to create a pool of money dedicated to cleaning up livestock waste from CAFOs?

(b) Response: Yes. These options were considered but rejected.

(66) Subject: Owner / Operator Liability

(a) Comment: Bernie Miller
Sue Anne Salmon
Dan Weatherspoon
Charles Bates
Valerie Bach, Kentucky Conservation Committee

We need integrator liability and stricter rules and regulations.

(b) Response: The comment is noted. The proposed administrative regulation and the existing KPDES administrative regulations require integrator liability.

(67) Subject: Owner / Operator Liability

(a) Comment: John Porter
Integrator liability is necessary. The chicken industry has always been up and down. People go bankrupt. There is a lot of investment. We must have the companies that own them tied to liability. There is too much loss to taxpayers.

(b) Response: See response #(66).

(68) Subject: Owner / Operator Liability

(a) Comment: Dorothy Campbell

Aloma Dew, Sierra Club
Nancy and Roger Grace
Rick and Linda Lam
Ann Wilkerson

Who is going to be responsible for the clean-up if the houses are abandoned or have lost contracts? Who will pay for environmental or health catastrophes? Who will be responsible if well water is contaminated? Those who profit most, the integrators, should be held responsible for any damage they help create.

(b) Response: See response #(66).

(69) Subject: Owner / Operator Liability

(a) Comment: Susan Crosswait
Linda McGregor
Hunter Roberts
Ann Wilkerson
Heather Roe Mahoney, Democracy Resource Center
Liz Natter, Democracy Resource Center

Integrators have been heavily subsidized with Kentucky tax dollars. The average Kentucky farmer has a net income of \$14,589 and integrators make millions. One man and his wife made 81 cents an hour over the last five years and they are trapped. When your house, your farm, and your belongings are mortgaged to finance huge metal barns, you are slave to the integrator. The integrators have significant input into how the animals are fed, housed, and managed.

Baiting for rodents costs about \$150.00 a year and chemicals that would bind litter making it less soluble and less of a water quality threat cost \$1,500.00 to \$1,800.00 a year, which the farmer can not afford. Integrators control and profit from the operations. It is only fair that the integrator shoulder a portion of the expense for being environmentally responsible. If the integrator has motivation to be concerned that the growers are being good neighbors and environmentally responsible, then there will be less problems. Kentucky's farmers and taxpayers should not be left holding the bag for clean up.

(b) Response: See response #s (46) and (66).

(70) Subject: Owner / Operator Liability

(a) Comment: Emily Hughes

Family farmers struggling for less than \$15,000 a year on average must not be condemned by their own state government to underwrite liabilities of the chicken industry's poultry processors / marketers with combined annual sales of much more than \$36 billion. The thuggery of that industry is detailed in a book recounting drug trafficking by chicken processors. We can not pervert Kentucky's resources through unregulated CAFO conduits transmitting disease, death and drugs. What will happen in the Kentucky economy should the market for chicken collapse? There's already a horrendous clean-up cost threatening farm owners, counties, and the state.

(b) Response: See response #(66).

(71) Subject: Owner / Operator Liability

(a) Comment: Tammy Lamb
Polly H. Young

Integrators and farmers must abide by the laws and regulations just like other businesses and residents.

(b) Response: See response #(66).

(72) Subject: Owner / Operator Liability

(a) Comment: Dennis Liptrap, IPKY

The Cabinet is concerned with the ability of individual CAFO operators to pay the cost of remediation for any stream damage caused by animal waste. Within the past two years, what direct costs for remediation of streams damaged by livestock waste have been incurred by the Cabinet and / or producers? Please list the remedial activities, the average cost per incident, and the highest cost for a single incident. Are civil penalties assessed by the Cabinet considered a part of remediation?

(b) Response: See response #(61). In addition, civil penalties are not a part of remediation.

(73) Subject: Owner / Operator Liability

(a) Comment: Charles Bates

The fundamental ethic of people in this area is wanting to get along with their neighbors and not make a fuss. This multi-billion dollar industry grows while hiding behind the local people who do their dirty work and take all the liability.

(b) Response: See response #(66).

(74) Subject: Owner / Operator Liability

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

The poultry industry has given small farmers an opportunity to stay on the farm. Farmers are independent operators and should be left to run their farms themselves.

(b) Response: See response #(66).

(75) Subject: Owner / Operator Liability

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

List all states that require integrator liability as part of their NPDES permits. List all states, where EPA is the authorized permitting authority, that have incorporated integrator liability into their NPDES permits.

(b) Response: See response #s(15) and (66). It is the Cabinet's understanding that this EPA requirement is nationwide and would apply to all states that administer the NPDES program.

(76) Subject: Owner / Operator Liability

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

In your Notice of Intent Statement of Consideration, comment #111, the Cabinet stated that the issues involved in the Ground Water Protection Plan (GPP) are different than those involving the KPDES program. Please list those issues for poultry houses on less than 10 acres that were addressed by the GPP and KPDES and how they differ.

(b) Response: Integrator liability applies to the KPDES program but not to the GPP.

(77) Subject: Owner / Operator Liability

(a) Comment: Susan Crosswait

We are disappointed in Farm Bureau for trying to undo the one thing that can protect the grower and the citizens of Western Kentucky the most, integrator liability.

(b) Response: See response #(66).

(78) Subject: Owner / Operator Liability

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC

If the term "owner or operator" as used in the federal NPDES permit program presently encompasses integrators, the promulgation of 401 KAR 5:072 Section 2 is unnecessary. If the term does not encompass integrators, 401 KAR 5:072 Section 2 is more stringent than the federal NPDES program.

(b) Response: See response #(15). The proposed administrative regulation provides a "bright line" test for determining when a person will be an owner / operator and is therefore helpful even if not necessary.

(79) Subject: Owner / Operator Liability

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC

The term "controls the inputs or other material aspects" is so vague and ill-defined that it would be impossible for a person to determine whether he was subject to the KPDES permit program.

(b) Response: We do not believe the term is vague and can be determined as a matter of fact based on the facts of the situation.

(80) Subject: Owner / Operator Liability

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC

The concept of joint and several liability for owners and operators is foreign to the NPDES / KPDES permit program in that a single KPDES permit is issued and only the permittee is liable for compliance with the permit.

(b) Response: Both owners and operators of facilities, including sewage treatment plants have always been responsible for the facility pursuant to the federal and state administrative regulations.

(81) Subject: Owner / Operator Liability

(a) Comment: David A. Owen, Counsel, Cagle's-Keystone Foods LLC

401 KAR 5:0072 Section 2 would require KPDES permits to be obtained by CAFO owners, by CAFO operators, and by CAFO integrators. This should be revised to correspond to the remainder of the KPDES permit program to clarify that a single KPDES permit is issued to the operator of the discharging activity and no separate permit is required for the owner of the discharging activity or to others in a position comparable to integrators.

(b) Response: Only one KPDES permit is needed for a CAFO. This does not differ from other operations. See response #(80). A change is not needed.

(82) Subject: Owner / Operator Liability

(a) Comment: Tom FitzGerald, Kentucky Resources Council

We strongly support the proposal that integrators should be required to be co-permittees with the contract growers and should be jointly responsible for compliance with any permit conditions. The corporate contract model of production of livestock is attractive to the corporations that control the production, because through contracts, they shift the risks down the chain while

exerting significant control and reaping the lion's share of the profits up the chain. Those who control the production in the animals and the inputs and outputs should bear joint and primary responsibility for environmental compliance. Hog lagoons can be extremely costly to close. Mishandled poultry waste can also result in environmental liability. The taxpayers of Kentucky should not be forced to bear this liability and risk. Multi-national corporate integrators are using farmers for their own purposes. The owners of the land on which these facilities are located are held responsible despite the fact that they do not own the animals. Most of the owners are already in debt to build these operations and will not be financially able to clean up spills and runoff. Why should the burden of environmental liability be placed on Kentucky farmers and taxpayers and not on these billion dollar companies?

(b) Response: See response #(66).

(83) Subject: Owner / Operator Liability

(a) Comment: W.H. Graddy, Sierra Club

Liz Natter, Democracy Resource Center

We strongly support the language in Section 2 clarifying that the integrator shall be defined as an "owner and operator" along with the landowner. The integrator has the most control over where chicken houses can be built and how concentrated they will be. This entity has greater technical expertise to address problems such as mice, rats, flies, dust, noise, and odor. This entity also has greater resources to clean up environmental problems without shifting the cost to the public.

Language requiring joint and several liability allows the public to avoid getting involved in determining environmental responsibility between the various owners and operators of a CAFO.

The Draft Guidance says "corporate entities that exercise substantial operational control over a CAFO should be co-permitted along with the CAFO operator. Corporate entities that exercise such operational control over a CAFO are considered "operators" of the CAFO under the Clean Water Act".

(b) Response: See response #(66).

(84) Subject: Siting Criteria

(a) Comment: Debby Allen

The number of houses per acre should be limited. The regulations are necessary for future generations.

(b) Response: The Cabinet has chosen not to address density of animals allowed. The agency would note that handling of manure in an appropriate manner, both from an agronomic and environmental perspective, will address animal density concerns in many respects. Further, the setbacks help address the density issue.

(85) Subject: Siting Criteria

(a) Comment: Charles Stanley

Prohibit these giant factory pig farms from locating in or near floodplains.

(b) Response: The proposed administrative regulation specifically states that, "A livestock barn, poultry house, or lagoon constructed or expanded after February 14, 2000 shall not be located in: (a) A 100-year floodplain unless permitted pursuant to 401 KAR 4:220."

(86) Subject: Siting Criteria

(a) Comment: Hunter Roberts

Most of the proposed setbacks are not far enough. I live approximately 3,900 feet from an existing CAFO and the odor at times causes you to go inside and close the doors and windows. I propose that no CAFO be built within four square miles of an existing CAFO.

(b) Response: The proposed setbacks are the result of an evolving process that the Cabinet has undertaken since early 1997. They represent the Cabinet's Best Professional Judgement of what is needed to protect human health and the environment at this time. See also response #(84).

(87) Subject: Siting Criteria

(a) Comment: Susan Crosswait

Sue Anne Salmon

There should be some setback requirements for smaller growers. A couple who lives 300 feet from only two chicken houses cannot enjoy their yard and home due to the smell and flies. They are covered in fly bites.

(b) Response: The proposed ordinary administrative regulation only deals with operations that are defined as CAFOs. While the Cabinet recognizes the human health and environmental concerns related to smaller operations, the agency has not sought to address those in this proposed administrative regulation at this time. The Cabinet would note, however, that the AWQ Plan BMP # 17 establishes minimum setbacks for poultry operations with more than 10 acres. This would apply to any size poultry operation, with more than 10 acres.

(88) Subject: Siting Criteria

(a) Comment: Susan Crosswait

W.H. Graddy, Sierra Club

Please consider a 750 foot setback from a neighbor's property line.

(b) Response: The Cabinet has chosen to not address property line setbacks, but rather to rely on setbacks from dwellings and other similar features in order to provide protection of human health and the environment.

(89) Subject: Siting Criteria

(a) Comment: David Garrett

Sue Anne Salmon

Setback distances are inadequate. On warm summer days you can smell the stench more than two miles from the chicken houses. Property line setbacks should be required. Property owner's health is associated with all of his or her property, not just their dwellings. One can spend most of a day's time away from the dwelling.

(b) Response: See response #(86) and (88).

(90) Subject: Siting Criteria

(a) Comment: Susan Crosswait

The Cabinet has drafted setbacks from sink holes, but we do not know where sink holes will develop. There was a small earthquake near Paducah creating three new sink holes, one of which drained a 30 acre lake near Graham. The New Madrid Fault is expected to produce a large magnitude earthquake in the next 50 or 100 years. We are not a good candidate for hog waste lagoons.

(b) Response: The Cabinet notes the concern.

(91) Subject: Siting Criteria

(a) Comment: Dorothy Campbell

Chicken houses should be one mile from neighboring homes.

(b) Response: See response #s(86) and (88).

(92) Subject: Siting Criteria

(a) Comment: Faye Lear

Linda McGregor

At least two miles would be a reasonable distance between production operations and residential dwellings.

(b) Response: See response #s(84), (86), and (88).

(93) Subject: Siting Criteria

(a) Comment: Aloma Dew, Sierra Club Conservation

Valerie Bach, Kentucky Conservaton Committee

Bernadine Edwards

Barbara Thomas

Setbacks are inadequate and need to be strengthened.

(b) Response: See response #s(84), (86) and (88).

(94) Subject: Siting Criteria

(a) Comment: John Porter

I support the setbacks. Setbacks have always been necessary and are especially today with larger numbers of concentrated animals. Some people that live 600 feet further than the proposed setbacks still have problems, especially when they're loading and unloading manure on humid days. Contract growers have rights, but so do rural property owners.

(b) Response: The Cabinet acknowledges the support.

(95) Subject: Siting Criteria

(a) Comment: Dan Weatherspoon

We need 2,500 foot setbacks from property lines, unless there is written permission from adjacent property owners.

(b) Response: See response #s(84), (86) and (88).

(96) Subject: Siting Criteria

(a) Comment: Greg Henson, , Agriculture and Natural Resources County Extension Agent, McLean County, Kentucky

Section 2, paragraph 3(c) says setbacks apply to land application of waste at the CAFO. For poultry and swine operations, the CAFO is a collection of buildings. Nobody I know spreads manure in buildings. They use cropland, and that may be miles from the CAFO. Does this mean spreading manure is exempt from any setbacks unless it's spread in or next to these buildings? In the case of poultry, existing operations are exempt from the 1,500 setback from incorporated city limits. It looks like an existing operator can spread poultry litter up to the city limits, with no setback limits. Livestock farmers grow animals and generate manure. Crop farmers spread

manure and grow crops; they may or may not be the same person and the regulation is fuzzy on that.

(b) Response: The setbacks established in 401 KAR 5:072 Section 3, establish setbacks for CAFO operations as the comment notes. This applies to land application of manure on the same operation where the animals are confined. This includes not only the collection of buildings expressed in the comment, but all acreage owned and operated by the CAFO operation. Therefore, in response to the question, “does this mean spreading manure is exempt from any setbacks unless it’s spread in or next to these buildings”, the answer is no.

With respect to land application for existing operations (prior to February 14, 2000) as it relates to incorporated city limits, the table in 401 KAR 5:072 Section 3 is clear. Given that some CAFOs are already located next to or within incorporated city limits, land application setbacks from city limits do not apply for those existing operations. However, all other land application setbacks will still apply to CAFOs adjacent to or within city limits.

On the matter of who the proposed administrative regulation applies to in regards to land application, the Cabinet has responded to this previously. A frequent misinterpretation of the proposed administrative regulation that has been made relates to how the use of manure would be affected. This proposed administrative regulation would only address manure as it is applied on a farm, if that farm is defined as a CAFO. For example, an individual who purchases or uses manure from a CAFO operation, but is not a CAFO itself, would not be subject to the proposed administrative regulation. In that instance, the operation would need to adhere to the Agriculture Water Quality Plan BMPs. Only operations that are defined as a CAFO are subject to the proposed administrative regulation. See response #s(22), (97), and (98).

(97) Subject: Siting Criteria

(a) Comment: Greg Henson, Agriculture and Natural Resources County Extension Agent, McLean County, Kentucky

The setback requirements discriminate against animal species. Poultry setbacks are less, putting beef, dairy and hog producers at a competitive disadvantage. Why are poultry setbacks less?

(b) Response: The poultry setbacks were primarily based on the Agriculture Water Quality Plan BMP #17. Similar setback BMPs for swine, beef, or dairy did not exist. In addition, the dry nature of poultry litter (provided it is kept dry), lends itself to less odor than does wet manure, which is typically the case with swine, dairy and some beef operations.

The Cabinet has chosen to not address property line setbacks, but rather to rely on setbacks from dwellings and other similar features in order to provide protection of human health and the environment. Setbacks are proposed for land application of manure at a CAFO.

(98) Subject: Siting Criteria

(a) Comment: Ann Wilkerson

Growers should not give or sell the manure unless they have a written agreement that the regulations and setbacks will be adhered to if the manure is to be stored or applied in Kentucky. Siting requirements should be included to make sure that CAFOs will be good neighbors and that houses will not be packed into a small area with disregard to their neighbors.

(b) Response: Agriculture Water Quality Plan BMP #17 (Poultry Facility Siting) requires a setback of 1500 feet for schools, churches and adjacent cemeteries, incorporated city limits and public parks. In addition, BMP #17 establishes setbacks from dwellings other than growers/or not associated with the operation at 500 feet, except at tunnel ventilation fan outlets, which are to

be 750 feet. The proposed ordinary administrative regulation proposes to not distinguish between dwellings and other structures/areas where the public may be. Since dwellings are occupied as often, if not more than these other features, an equal level of protection is deemed necessary.

The proposed setbacks are the result of evolving process that the Cabinet has undergone since early 1997. They represent the Cabinet's Best Professional Judgment of what is needed to protect human health and the environment at this time. The poultry setbacks, for example, are based substantially on BMP #17 from the Agriculture Water Quality Plan. One notable exception is dwellings. Any future BMPs developed will be evaluated at that time.

Producers that maintain CAFO operations will be required to account for all manure generated at their operation as a part of their KPDES permit requirements. However, setbacks for manure use off-site the CAFO is subject to the provisions of the AWQ Plan, and not the proposed ordinary administrative regulation. See also response #s(22), (96) and (97).

(99) Subject: Siting Criteria

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

State where siting distances for CAFOs are given in the USDA / USEPA Unified National Strategy for AFOs, in other federal regulations, or the Draft Guidance Manual and Examples of NPDES Permits for CAFOs. Site the references, scientific information, or research that was used to determine each setback requirement in the proposed regulation.

(b) Response: While the USDA/USEPA *Unified National Strategy*, NPDES/KPDES regulations, or the *Draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations* do not contain specific siting distances, they do reference siting and management practices for CAFO operations. These practices are to be a part of, for example, a Comprehensive Nutrient Management Plan (CNMP) or its equivalent, which are required for all CAFOs. The Cabinet has proposed the ordinary administrative regulation to specifically outline what the appropriate siting and management practices for CAFO operations in Kentucky will be.

For the odor and air toxic concerns, the Cabinet used various air dispersion models, risk information, and other research tools to evaluate the potential odor, air toxics, pathogen, and airborne health impacts from these operations. For water related setbacks, the Cabinet evaluated Best Management Practices in use by NRCS, technical and research papers and publications, and other available data. The setbacks represent the result of that research.

In addition the Cabinet would note that setbacks for many of the same features are established by the Agriculture Water Quality Plan BMP # 17 for poultry operations. The Kentucky Poultry Federation has expressed support of the Agriculture Water Quality Plan in its comments made during the regulatory process. The Cabinet used these established setbacks as the basis for the majority of the proposed setbacks for poultry CAFOs.

See response #(3).

(100) Subject: Siting Criteria

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

If a CAFO is allowed to move animal waste onto other farms, why then is the Cabinet concerned about the lack of acreage on some operations (Reference Notice of Intent Statement of Consideration #s 72 & 74)?

(b) Response: As previously noted in this Statement of Consideration, the proposed ordinary administrative regulation only applies to CAFOs. This is not to suggest that the Cabinet does not have concerns with respect to smaller operations or other locations where manure will be

used or stored. This proposed administrative regulation, however, does not deal with those operations.

As it relates to poultry operations in general, and the lack of acreage concerns discussed in the previous Statement of Consideration dated May 12, 2000, the Cabinet maintains those concerns. If all poultry operations in Kentucky had more sufficient acreage initially, then many of the complaints and problems seen today could likely have been avoided. A number of poultry operations have been sited improperly. Litter storage or stockpiling problems have been a frequent and ongoing problem. In many instances, additional acreage could have negated some of these problems.

In sum, had sufficient acreage been available, proper siting and litter handling been addressed initially, many of these operations could have avoided the various problems that the agency has encountered, and the public exposed to. The proposed ordinary administrative regulation is an effort to prevent these problems from re-occurring on CAFO operations.

See response #s(22), (96), (97), and (98).

(101) Subject: Siting Criteria

(a) Comment: W.H. Graddy, Sierra Club

The siting criteria is not protective enough. Adopt setback requirements that will provide more effective protection to adjoining property owners.

There is ample evidence that animal waste lagoons should not be constructed in areas of active karst features such as sinkholes, sinking streams, and springs. The Sierra Club strongly disagrees with the proposed regulation which effectively grandfathers in poultry houses, lagoons, litter storage structures, and composting facilities if they existed on February 14, 2000.

The regulations should require that all CAFO facilities meet reasonable setback requirements from other properties and from water resources, and that those facilities that are constructed in violation shall be phased out of operation based on considerations of severity of harm and risk.

The Sierra Club strongly supports the requirement that all land application of waste at a CAFO shall comply with setback requirements.

(b) Response: See response #s(84), (86), and (88). With respect to lagoons in karst topography, the proposed administrative regulation does propose to prohibit such over a sinkhole or other enclosed depression where subsidence is evident. Other specific siting concerns will be addressed during the case-by-case permitting of each CAFO operation.

With regard to existing poultry houses, lagoons, litter storage structures and composting facilities, the agency has determined that the proposed administrative regulation not require those operations in conflict with the proposed ordinary administrative regulation to move, relocate, or shut down those physical structures.

(102) Subject: Siting Criteria

(a) Comment: Heather Roe Mahoney, Democracy Resource Center

Liz Natter, Democracy Resource Center

We support the setbacks in the draft regulations with the exception of the setbacks for dwellings and lakes, streams, or rivers. Neighbors and those living downstream must be protected from disease organisms and vectors, antibiotics, health effects, obnoxious odors, and devaluation of property caused by odors. In the absence of a program for air and waste monitoring and more substantial protections from odors, protective setbacks are required. DCR calls for a 5,000 foot

setback for barns, lagoons, and land application (other than injection) from dwellings, city limits, and public places. Property line setbacks are needed. We support the following setbacks: 3,000 feet from poultry barns to a dwelling, lake, stream, or river (1,000 feet if land application is used); 1,500 feet from a property line (750 feet if land application is used); 1 mile from a swine barn or lagoon to a dwelling and 3,000 feet to a lake, stream, river, or property line (1,000 feet if land application is used). DCR urges the Division to retain the five mile setback distance from a public water supply, which should be extended to swine waste land application areas, and not to allow the placement of lagoons in areas where there is a significant likelihood of subsidence.

(b) Response: See response #s(84), (86), (88), and (101).

(103) Subject: Siting Criteria

(a) Comment: Tom FitzGerald, Kentucky Resources Council

The use of setbacks as a surrogate to proper management of odors, airborne toxics, disease-causing organisms and other air contaminants is inappropriate. Setbacks should be required under the KPDES and water quality authority to assure prevention of water pollution and under 401 KAR Chapters 30, 45, and 47 to minimize nuisances, by providing geographic isolation of facilities and their inherent odors and vectors. Setbacks should not be considered a sufficient stand-alone pollution control strategy; there should be a general prohibition of nuisance or water pollution. The National Pork Producer's Association recommends new hog operations be located 1,500 feet from houses and 2,500 feet from schools, hospitals and churches. Research and anecdotal evidence suggests that odors are a problem at far greater distances. More restrictive setbacks have been adopted by other states and localities. The Council also recommends that the Cabinet consider allowing a variance from the setbacks for demonstrated methods of management that result in no nuisance condition or water pollution, and that the Cabinet differentiate in setback requirements between land application by spray irrigation, wet management by incorporation, and dry waste management.

Any setbacks which are directed at preventing nuisance must be crafted so as to fully protect the use and enjoyment of other properties. Assume the most sensitive land uses for adjoining lands and establish setbacks based on the existence of the sensitive land uses at the property boundary.

Appropriate setbacks need to apply to all activities (including land application) conducted after the enactment of the regulations, because there is no pre-existing right to cause water pollution or a nuisance.

(b) Response: See response #s(15), (84), (86), (88), and (101).

With regard to nuisance matters, the Cabinet is not proposing to address this. Nuisance is better addressed at the local level via planning and zoning and/or health ordinances. Neighbors have common law rights concerning nuisance that can also be addressed in the courts.

(104) Subject: Siting Criteria

(a) Comment: Tom FitzGerald, Kentucky Resources Council

The contribution of ammonia transported by evaporation through air to waterbodies must be considered in setting setbacks. Siting provisions should also account for slope, avoiding natural runoff channels as well as more defined streams, and otherwise considering the potential for surface and groundwater pollution.

(b) Response: The Cabinet recognizes the concern with ammonia transport via air deposition to waterbodies. The Cabinet would note however, using conservative assumptions,

that a 1000 animal unit swine operation (for example) would contribute no more than a small fraction of a pound of nitrogen per acre in the area of deposition. Compared to the contributions from mineralization of soil organic matter, nitrogen fixing bacteria, and other sources, the contribution from swine operations would be minor, and would not be expected to negatively affect native plant species wildlife habitat, or significantly increase ambient levels of nitrogen in surface areas.

With regard to other siting considerations, those discussed would need to be evaluated on a site specific basis in the context of any nutrient management plan developed and implemented by the CAFO operation.

(105) Subject: Siting Criteria

(a) Comment: Tom FitzGerald, Kentucky Resources Council

Include the ability to require setbacks to be enlarged as needed to prevent pollution and nuisance.

(b) Response: See response #(101).

(106) Subject: Odor

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

As stated in your Notice of Intent Statement of Consideration (#22), how does the enzyme phytase reduce odor?

(b) Response: Any odor benefits derived from the enzyme phytase used as a feed additive would be tangential to the larger benefit derived from overall phosphorus reduction seen in litter or manure. Phytase used as a feed additive for broilers (for example) can aid in the digestion of phosphorylated cyclic sugar alcohols, or phytates, in their feed. As a result, a greater percentage of the consumed phosphorus can be retained by the broiler(s), thereby reducing the level that would otherwise be excreted as litter. While some decrease in overall litter or manure production can be observed, overall phosphorus concentrations can be significantly reduced. In addition, some nominal decrease in nitrogen manure content can occur, due to a slight improvement in nitrogen digestion. This combination of benefits, therefore, can yield some improvements with respect to odor.

(107) Subject: Odor

(a) Comment: Carole Knoblett, Kentucky Poultry Federation

If the Cabinet feels that nuisance matters are better addressed at the local level via planning & zoning and / or nuisance ordinances, why then does the Cabinet continue to address potential odor problems in this proposed administrative regulation (See Notice of Intent Statement of Consideration #s(84) and (88))?

(b) Response: See response #s(3), (15), and (103).

(108) Subject: Permanent Litter Storage

(a) Comment: Susan Crosswait

Ann Wilkerson

Dry litter storage and proper land application of the manure is very important in protecting our water and controlling disease. Litter can be stored until the time is right to apply it, allowing for the absorption of nutrients. The management of litter is a problem in our area, for example, chicken litter including dead chickens is being spread on frozen fields. Piles of uncovered manure are washing into our creeks.

(b) Response: The Cabinet agrees that proper litter management is necessary at all CAFO operations. The proposed ordinary administrative regulation requires that permanent litter storage be in place at all poultry CAFOs by October, 2001. In addition, requirements for proper nutrient management will be a component of any KPDES permit issued to a CAFO.

(109) Subject: Permanent Litter Storage

(a) Comment: Greg Henson, Agriculture and Natural Resources County Extension Agent, McLean County, Kentucky

Section 4 requires poultry operators to have permanent litter storage buildings by October, 2001, based on the assumption that cost share funds may be available. That is presumptive since we have had growers approved for over a year and funds have not become available and NRCS has not been able to agree upon and approve a design. The regulations do nothing to describe storage other than to require a building. Currently, the most efficient means of handling poultry waste is to clean out the necessary amounts and apply it directly. Field stockpiles are not storage piles. What function does a storage building serve when the intent is to apply the litter as soon as possible?

(b) Response: The legislature made additional cost-share dollars available this past legislative session. The Cabinet did not establish the requirement to have a permanent litter storage building contingent upon having these dollars available. Rather, the agency made this a requirement in the proposed ordinary administrative regulation as a means of protecting human health and the environment. In addition, the Cabinet would note that the requirement for litter storage and the date for having such in place is consistent with the AWQ Plan BMP's # 11 & 17.

With respect to design of a litter storage structure, the Cabinet has not specified in the proposed administrative regulation the details of an acceptable structure. The agency will work with NRCS on a case-by-case basis in this respect.

As to applying litter directly from the poultry house onto the field, this is perfectly acceptable provided the operation applies the litter in an appropriate manner. However, the ability to apply directly onto a field is not always available due to rain, saturated soils, frozen soils, pasture or crop land is not accessible, or any variety of factors. As a result, litter has been and is being stored or stockpiled inappropriately. Given this fact, litter storage buildings serve to protect human health and the environment during times when litter cannot be land applied immediately and directly from the poultry house.

(110) Subject: Permanent Litter Storage

(a) Comment: Rebeckah Freeman, Kentucky Farm Bureau Federation
Ira Linville, Kentucky Department of Agriculture

We appreciate the Cabinet's recognition in the proposed regulation that permanent litter storage structures could not be required before October, 2001 as previously established by the Agricultural Water Quality Authority. We further appreciate your clarification that the siting criteria do not apply to permanent litter storage structures on poultry CAFOs in existence prior to February 14, 2000.

(b) Response: The concurrence is noted.

(111) Subject: Permanent Litter Storage

(a) Comment: W.H. Graddy, Sierra Club

The Sierra Club supports the requirement that Poultry CAFOs have permanent litter storage but opposes the deadline of October, 2001. These facilities are not difficult to build and the industry has been on notice about this requirement from the EPA Draft Guidance issued last August. These facilities should be in place no later than December, 2000.

(b) Response: The Cabinet has determined that October, 2001 is an acceptable time frame to have permanent litter storage structures in place at all poultry CAFOs. However, this does not prevent the Cabinet from requiring specific remedial measures necessary to abate air or water pollution violations.

(112) Subject: Permanent Litter Storage

(a) Comment: Heather Roe Mahoney, Democracy Resource Center
DRC notes the Division's decision to exempt poultry CAFOs existing before February 14, 2000 from the siting requirements for dry litter storage facilities. However, DCR urges the Division to require these facilities to meet the siting requirements as much as possible.

(b) Response: See response #(111).

(113) Subject: Animal Waste as a Fertilizer

(a) Comment: Tom FitzGerald, Kentucky Resources Council
Animal waste is a natural resource and in excessive quantities it is a pollutant. When more litter is applied than is needed, nutrients can contaminate surface and groundwater. Match the nutrient content of the waste to the nutrient needs of the soil or the crops that are being grown. The University of Kentucky recommends that litter only be applied every other year. Manure management plans and groundwater monitoring should be required. How is the spreading of poultry manure being monitored? Who says it's time to stop? Where are the safeguards?

(b) Response: The application rate of poultry litter will vary depending upon a variety of factors. Soil and manure nutrient content must be known to prevent the application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrients and prevent pollution. Among other factors, the use of commercial fertilizers must be factored into the application rate. In some instances, the addition of poultry litter may be prohibited altogether as a result of Natural Resource Conservation Service (NRCS) standards and specifications. Each farm will need to be evaluated on a case by case basis.

An operation which is defined as a CAFO will be required to obtain a KPDES permit for that operation. As a part of that permit, the operation will be required to develop a Comprehensive Nutrient Management Plan (CNMP) for the management of animal waste generated and handled on that operation. That would include monitoring. The Cabinet is responsible for enforcement and compliance oversight with the permit conditions

(114) Subject: Animal Waste as a Fertilizer

(a) Comment: Carole Knoblett, Kentucky Poultry Federation
If both manure and commercial fertilizers are to be applied in accordance with the AWQ plan, then why does the Cabinet feel that cropland and grasslands associated with a CAFO need greater regulation than cropland and grasslands NOT associated with a CAFO?

(b) Response: As has been stated a number of times in this statement of consideration, the proposed ordinary administrative regulation deals only with CAFOs. This is not to suggest that the agency does not have concerns with the use of manure and/or commercial fertilizers on areas not otherwise deemed a part of the CAFO. See response #(22) and (96) through (98).

The agency has sought to tier the requirements on animal feeding operations (AFOs) from the onset. For all AFOs greater than 10 acres in size, the requirements of the AWQ Plan must be adhered to. For all AFOs that utilize a liquid waste handling system, the requirements of the AWQ Plan in addition to those of the applicable KNDOP (permit) must be adhered to. For all AFOs that are defined as a CAFO, the requirements of the AWQ Plan in addition to those of the applicable KPDES permit must be adhered to. In all cases, the manner in which manure must be handled should be substantially the same from an agronomic and environmental perspective. Setbacks will be different depending upon the size and nature of the operation. See also response #(33).

(115) Subject: Additional Requirements Needed

(a) Comment: Susan Crosswait

Nancy and Roger Grace

Consider density requirements for a watershed or base manure use on acreage. Many families and two municipalities in our area depend on groundwater. Require manure management and audits of chicken houses. Require groundwater monitoring under hog waste lagoons with test results available in Frankfort and on the farm.

(b) Response: See response #(84) and (113).

(116) Subject: Additional Requirements Needed

(a) Comment: Aloma Dew, Sierra Club

We are most concerned about potential health threats from dust, pathogens, water pollution and eventual pollution of our soil. More stringent attention needs to be given to litter storage and application of wastes and wastewater because of water pollution from phosphorus, nitrogen, and metals. We feel the proposed regulation does not adequately address the nuisance issues which make the lives of neighbors stressful, unhealthy, and miserable.

(b) Response: See response #(84), (103), and (108).

(117) Subject: Additional Requirements Needed

(a) Comment: David Garrett

Liz Natter, Democracy Resource Center

The odor standard the Cabinet currently enforces is not addressing the issue. Animal waste odors are devastating to many citizens' quality of life. There are objectionable odors which do not register on the instrument being used by the Division for Air Quality(DAQ). The scentometer used by DAQ is likely to fail to detect substantial odor problems since by the time an inspector gets to the location where the meter is to be used, their noses will be substantially desensitized to a 1/7 mixture of odiferous air with clean air. An odor problem exists at far greater distances than current setbacks. Develop odor rules and practices that are more effective and practical than the current regulations without placing undue burdens or expenses on farmers. Include control practices such as more frequent cleaning, better ventilation, air filters, negative air systems and more. Hold livestock operations accountable for the quality of air. In the absence of a program for air monitoring and a more substantial set of protections from odor, protective setbacks are required.

(b) Response: See response #(84), (86), (88), and (101).

(118) Subject: Additional Requirements Needed

(a) Comment: Nancy and Roger Grace

One chicken house owner has employees that draw disability from the state. How can this be, except that he pays them cash for their work and doesn't report it?

(b) Response: This comment is not germane to the proposed ordinary administrative regulation. The Cabinet does not regulate employment and welfare matters.

(119) Subject: Additional Requirements Needed

(a) Comment: Faye Lear

I would like to see the 16 large exhaust fans directed at my house have a filter and stacks.

(b) Response: The Cabinet notes the comment. The proposed ordinary administrative regulation does not mandate certain technologies to address odor or other air toxics concerns.

(120) Subject: Additional Requirements Needed

(a) Comment: Linda McGregor

Ann Wilkerson

We urge you to strengthen the regulations. Some farmers don't cover their mountains of chicken waste and some spread chicken litter containing chicken carcasses on frozen fields. Not only does it stink, rain water washes it into the creeks, groundwater, roads, and neighbors' properties. We need regulations about the use of huge amounts of animal waste fertilizer produced by the factory farms. Besides requiring testing for phosphorus, nitrogen, and heavy metals, growers and integrators should be required to show that manure shall be handled in a responsible way. Animal waste questions of "who, when, how, where, and what" need to be addressed by the regulations. Require that chicken houses not be cleaned during hot weather. We need better enforcement and more unexpected inspections of chicken houses.

(b) Response: See response #s(84) through (119).

(121) Subject: Additional Requirements Needed

(a) Comment: Jackie Fugate

Put the chicken or hog houses on the thousands and thousands of acres of strip mine land where people can't smell them. Spraying for flies and spraying odor inhibitor on manure should be mandatory. Don't let them dump litter in the woods or on people's ground right up next to the fence, with chicken bones everywhere.

(b) Response: The Cabinet does not dictate in the proposed ordinary administrative regulation where chicken or hog houses will be, rather where they should not be. Local planning and zoning jurisdictions may choose to do this at the local level. The proposed administrative regulation does not address spraying for flies or requiring odor inhibitor sprays. The proposed administrative regulation does address how litter is to be handled.

(122) Subject: Additional Requirements Needed

(a) Comment: Bernadine Edwards

Ground and trees were cleared when chicken houses were built near my home. Require tree barriers and air filtering systems for chicken houses.

(b) Response: While the proposed ordinary administrative regulation does not require tree barriers and the like, the AWQ BMP # 17 clearly recommends this at all poultry operations greater than 10 acres in size.

Specifically, from BMP # 17:

“The topography, prevailing wind and discharge area of the tunnel ventilation fan should be considered when siting a house.”

“Consider future expansion as well as present number in determining siting of facilities. Sufficient land must be available for a disposal area without overloading soils or exceeding crop requirements.”

“Use vegetative screens or other methods as needed to shield structure from public view and/or improve visual conditions. They will also reduce dust and odors that might create a nuisance or the perception of a nuisance among neighbors. If the house is sited within an adequate windshield and on high ground with adequate drainage, many potential air and water quality problems can be avoided with little or no adverse effect on the community.”

(123) Subject: Additional Requirements Needed

(a) Comment: W.H. Graddy, Sierra Club

The regulations do not address the responsibility of the CAFO owner and operator for waste that is transported off site. These regulations do not make clear that the CAFO owner and operator must have a comprehensive nutrient management plan that is part of the KPDES permit and included in the KPDES permit application and subject to public comment, monitoring and enforcement.

(b) Response: The CAFO owner and operator will need to account for all waste that is generated on site. That would include an accounting of manure taken off site. The proposed administrative regulation does not address the need for a comprehensive nutrient management plan (CNMP), since that requirement is a part of the KPDES permit pursuant to other applicable KPDES regulations. See response #s(22) and (96) through (98).

(124) Subject: Additional Requirements Needed

(a) Comment: Liz Natter, Director, Democracy Resource Center

Require groundwater monitoring systems for detection of seepage from hog waste lagoons and land application areas. The regulations should take into account the environmental effects of atmospheric nitrogen deposition and consider the aggregate effect of facilities. Require monitoring of wastes for disease organisms and reporting of any disease outbreak among swine. All test results should be submitted to the Cabinet and available to the public. Require a plan for treatment to destroy pathogens. Waste should not be land applied on frozen or saturated soil or during a precipitation event. Require that waste not be land applied at a rate not exceeding the soil's infiltration rate. Require that waste be applied on a field for a maximum of three out of four years and that soil pH be regulated. Land application should be prohibited in the floodplain and on wetlands. Require filter strips. Prohibit land application of hog waste on crops grown for human consumption. Site characterization should be performed. Lagoons should not be permitted where subsidence is threatened, in karst areas, in the saturated zone, or over springs. Dams smaller than those required to be permitted should be checked for structural integrity. Reconsider imposing the original provisions from the 1997 emergency regulations regarding relatedness, especially with regard to corporate farms and common investors, as well as common land application areas. In addition, permitting needs to take into account performance and violations of applicants.

(b) Response: All aspects related to land application of animal waste will be addressed in the course of the KPDES permitting process, rather than in the proposed administrative regulation. Specifically, the Comprehensive Nutrient Management Plan (CNMP), the Agriculture

Water Quality Plan, and any applicable NRCS requirements will be evaluated collectively in the development of an appropriate nutrient management plan for a given CAFO operation. See also response #s(85), (90), and (101) as they relate to floodplain, sinkholes and subsidence. With regard to shared land application areas, existing administrative regulations require that operations which have common land application areas be considered one operation.

(125) Subject: Additional Requirements Needed

(a) Comment: Liz Natter, Director, Democracy Resource Center

A narrative standard preventing these facilities from creating a nuisance should be included in the regulations.

(b) Response: See responses #s(103), (105), and (107).

(126) Subject: Additional Requirements Needed

(a) Comment: Heather Roe Mahoney, Director, Democracy Resource Center
Liz Natter, Director, Democracy Resource Center

Place density limitations on chicken houses. Examine the impact of concentrations of poultry houses on air and water quality within the region and devise regulations to protect the public and environment from those effects.

(b) Response: See response #(84). With respect to cumulative impact of poultry houses, the Kentucky Watershed Management Framework is designed to account for these types of concerns and issues. This would include, for example, the Total Maximum Daily Load (TMDL) program administered by the DOW.

(127) Subject: Additional Requirements Needed

(a) Comment: Heather Roe Mahoney, Democracy Resource Center
Liz Natter, Director, Democracy Resource Center

Comprehensive nutrient management plans should be required, mandating that waste and soil be tested for phosphorous, nitrogen, and heavy metals. Growers and integrators should be required to demonstrate that waste shall be handled in a responsible manner.

(b) Response: As previously stated in this Statement of Consideration, an appropriate nutrient management plan will be a component of the KPDES permit for a CAFO.

(128) Subject: Additional Requirements Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

Swine and poultry wastes are highly concentrated sources of organic and inorganic nutrients, fecal coliforms, and other pathogenic microorganisms, and chemical oxygen demand. Placement of liquid waste lagoons or dry waste storage in floodplain areas invites downstream pollution in high-water or storm events and should be prohibited unless the area is flood-proofed. Open storage should be prohibited. Standards of Performance, beyond setbacks should be identified, including: siting requirements and setbacks; construction and design requirements for facilities; protection against catastrophic failure, leakage, and odor; characterization of any geological setting proposed for intensive operations or land application of wastes from such operations; prohibition of lagoons in karst areas; alternative treatment approaches which utilize lined above ground systems with leak detection; liner and seepage standards for lagoons; a description of the plan for management and disposal of wet and dry litter; characterization of wastes and wastewaters for all potential pollutants including disinfectants, pesticides, antibiotics, hormones,

heavy metals, and viruses; discussion of chemical reactions associated with waste disposal; evaluation of long-term concentration of salts and metals in soils used for land application; assessment of odors, air pollution, potential for spread of disease, and water pollution; the feasibility of alternative waste and wastewater treatment systems; lagoon design standards including liners and side walls with a design requirement of preventing leakage, and groundwater monitoring or leak detection systems; adequate distance from the base of the lagoon liner to the seasonal high water table; lagoon sizing should be sufficient to accommodate probable maximum precipitation event without failure or overtopping, and to accommodate seasonal demands where land application is inappropriate due to frozen soil or soil saturation; berming that will prevent migration of wastewaters to waters of the Commonwealth in the event of structural failure of the containment; lagoon influent and effluent monitoring; the name and address of the responsible party; designs and calculations for controlling run-on and runoff from all waste storage and disposal areas in order to prevent contamination or pollution of waters of the Commonwealth; standards to address nuisance and health problems associated with worker and public exposure to hydrogen sulfide and ammonia; odor control measures for all phases of the operation; require consideration of separate management of liquids and solids and covered manure storage tanks; landspread wastes and wastewaters should be treated to reduce pathogens prior to land-application; basing land application rates on phosphorus; curbs and concrete floors for litter and carcass compost facilities; land application should not be utilized as part of treatment; no land application to frozen soil; prohibition of aerial spraying and requirement for immediate incorporation and injection. A requirement should be included that past compliance history of all owners and controllers of the applicant be disclosed.

(b) Response: The existing KPDES regulations already address public notice and compliance matters. The integrator liability provision addresses how the producer and the processing facility are responsible for complying with environmental requirements related to the KPDES permit. With respect to liability insurance, the proposed administrative regulation does not propose to address that issue. Monitoring and reporting will be a condition of any KPDES permit issued.

The Cabinet has chosen not to address density of animals allowed. The agency would note that handling of manure in an appropriate manner, both from an agronomic and environmental perspective, will address animal density concerns in many respects. Further, the use of setbacks, deals with other aspects of the density issue. With regard to nuisance matters, the Cabinet is not proposing to address this. Nuisance is better addressed at the local level via planning and zoning and/or health ordinances.

As it relates to riparian buffer zones, constructed wetlands, and similar types of filter strips and buffer zones, those practices are not specifically addressed in the proposed administrative regulation. The Agriculture Water Quality Plan will address some of these aspects as well. The proposed administrative regulation addresses integrator liability as it relates to compliance with KPDES permit requirements. The proposed administrative regulation does not expressly prohibit the use of dead chickens as a fertilizer. The proper disposal of dead animals falls within the jurisdiction of the State Veterinarian. The proposed administrative regulation does not deal with the use of animal manure and subsequent mixing with sewage sludge. This is addressed by other state and federal regulations. The proposed administrative regulation does not address feeding of animal manure to other animals, since that is beyond the scope of this proposed administrative regulation.

The Cabinet used various air dispersion models, risk information, and other research tools to evaluate the potential odor, air toxics, pathogen, and airborne health impacts from these operations. The setbacks represent the result of that research.

The Cabinet recognizes the many issues associated with CAFOs, including water pollution, odor, disease, land values, etc. The Cabinet used all of the resources available to determine what setback distances would be reasonable to protect both human health and the environment.

The proposed administrative regulation does not address either transportation of dead animals, animal waste, truck weight or speed limits since that is beyond the scope of this proposed administrative regulation.

All aspects related to land application of animal waste will be addressed in the course of the KPDES permitting process, rather than in the proposed administrative regulation. Specifically, the Comprehensive Nutrient Management Plan (CNMP), the Agriculture Water Quality Plan, and any applicable NRCS requirements will be evaluated collectively in the development of an appropriate nutrient management plan for a given CAFO operation.

In addition, the Cabinet recognizes the many environmental issues related to CAFOs. However, the Cabinet has chosen to only address certain key aspects in the proposed administrative regulation, while utilizing the federal NPDES program and associated permitting process to deal with the majority of the site specific issues.

See also response #(124).

(129) Subject: Additional Requirements Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

A water pollution control strategy that limits only nitrogen application and which fails to address cumulative loading of wastes onto lands within each watershed and sub-watershed, and corresponding declines in the absorptive capacity of soils, is a strategy that fails to satisfy the requirements of KRS Chapter 224 regarding the prevention of water pollution.

All operations owned directly or under contract within a watershed should be aggregated for purposes of evaluating the mass loading of nutrients on lands within the watershed. Also, for purposes of determining whether anaerobic lagoons represent the best available technology for that facility, common holdings should be aggregated within each watershed or county, as appropriate.

The Cabinet should develop an explicit provision controlling the cumulative loading of pollutants onto land and into waters of each watershed, and allowing denial of a permit or denial of a proposed approach to land application or disposal of wastes and wastewaters where the agency finds that the addition of a new or expanded operation, reviewed against the baseline loading of nutrients onto lands and into surface and groundwater that is already occurring within a watershed, would exceed the carrying capacity of the soil and watershed. As required in state water quality standards, the impacts on the receiving stream and downstream waters should be evaluated to assure that the addition of pollutants from any proposed operation will not violate water quality standards or adversely affect water quality or uses.

Watershed based limits on land application of wastes and new operations based on TMDLs concept (loading limits needed on watershed specific basis to protect stream at critical flow from adverse aquatic impacts. Requirement that new operations offset, or find alternative wastewater management if fraction of total loading would be exceeded or when cumulative limits threatened.

(b) Response: See response #(126).

(130) Subject: Additional Requirements Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

The regulations should also include provisions regarding neighbor and public notice, disclosure of compliance history of all owners and controllers, and financial assurance that some funds will be set aside to assure proper closure of the facility and clean-up of any spill or release. There should also be a requirement for maintaining liability insurance to pay any judgments or claims from third parties that a nuisance has been created by the facility, and to pay any third party injury claims or loss of property value.

We support the expansion of the public comment period to 60 days with the opportunity for a local public meeting prior to permit review. Those residing within a certain distance of the proposed operation, and those owning lands or facilities required to be buffered from the operation, should receive special notice of the application and the right to comment. All monitoring data required under the regulations should be timely submitted and available for public review.

Appropriate reporting obligations should be imposed as will enable the agency to properly monitor implementation of the law and identify areas of concern. Immediate reporting of any releases, spills, leaks or groundwater contamination should be required. Density controls are needed for the number of animal units in a given area. Zones of use are needed for nutrient laden waters or litter so that the nutrients would be locally produced and locally used. Riparian buffer zones such as constructed wetlands are needed. Redundant nutrient barriers and linings should be required, especially in Karst areas.

(b) Response: The existing KPDES regulations already address public notice and compliance matters. The integrator liability provision addresses how the producer and the processing facility are responsible for complying with environmental requirements related to the KPDES permit. With respect to liability insurance, the proposed administrative regulation does not propose to address that issue. Monitoring and reporting will be a condition of any KPDES permit issued.

With respect to density controls, please refer to response to comment #(126). As it relates to riparian buffer zones, constructed wetlands, and similar types of filter strips and buffer zones, those practices are not specifically addressed in the proposed administrative regulation. The Agriculture Water Quality Plan will address some of these aspects as well.

(131) Subject: Additional Requirements Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

No new facilities relying on anaerobic lagoons and landfarming wastes or wastewaters should be allowed for intensive hog production operations. Aerobic treatment of wastes is available and preferable from an emission and odor standpoint. For any new proposed facility, the applicant should be required to utilize the best available control technology, including aerobic systems such as oxidation ditches, aerated storage tanks, and aerated lagoons, or other systems to maintain manure in an aerobic condition; or a controlled anaerobic digester with gas treatment.

No new production facilities relying on anaerobic lagoons and landfarming wastes or wastewaters should be allowed. Aerobic treatment of wastes, and dry waste management systems, are available and are preferable from both an emission and odor standpoint. The strictest scrutiny should be given to any land application of wastes proposed to be located in watersheds which are

nutrient-sensitive, or where the baseline loading for nitrogen, phosphorus or other constituents of concern from other sources within the watershed interferes with attainment of water quality standards in that waterbody. For any new proposed facility, the applicant should be required to utilize the best available control technology, including aerobic systems such as oxidation ditches, aerated storage tanks, and aerated lagoons, or other systems to maintain manure in an aerobic condition; or a controlled anaerobic digester with gas treatment.

(b) Response: The Cabinet has chosen not to address this issue in the proposed administrative regulation. EPA is currently in the process of evaluating treatment technologies for CAFOs nationwide and will update the effluent guidelines for that category of operations in the future. Current BAT under 40 CFR 412.13 requires that there "... be no discharge of process waste water pollutants to navigable waters." The federal guideline does not, however, dictate the type of technology that must be utilized to achieve that standard.

(132) Subject: Additional Requirements Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

Consistent with the recommendations of the national pork producers workgroup, an operator certification program comparable to that provided for other wastewater system operators, should be developed to provide training and to set minimum competency standards for operators of intensive swine production facilities.

(b) Response: The Cabinet supports the efforts of the National Pork Producers Association in this regard. However, the agency has not set out any operator certification requirements in this proposed ordinary administrative regulation.

(133) Subject: Additional Requirements Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

The proposed general permit lacks any provisions addressing the protocol for sampling and lacks baseline information concerning stream water quality necessary to enforce the permit which sets no operational effluent limits but instead relies on a general prohibition against violating instream water quality requirements. The permits should include a requirement to berm all land application areas to prevent runoff from reaching waters, and a prohibition against any runoff entering waters of the Commonwealth. Upstream and downstream baseline water quality monitoring should be required, and specific requirements for instream monitoring should be imposed to make enforceable the prohibition against worsening water quality. The permit is unenforceable and requires collection of sampling data that will never be utilized.

(b) Response: These comments will be addressed in the response to comments on the KPDES general permits.

(134) Subject: Additional Requirements Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

The regulations should also include provisions regarding neighbor and public notice, disclosure of compliance history of all owners and controllers, and financial assurance that some funds will be set aside to assure proper closure of the facility and clean-up of any spill or release. There should also be a requirement for maintaining liability insurance to pay any judgments or claims from third parties that a nuisance has been created by the facility, and to pay any third party injury claims or loss of property value.

Appropriate reporting obligations should be imposed as will enable the agency to properly

monitor implementation of the law and identify areas of concern. Immediate reporting of any releases, spills, leaks or groundwater contamination should be required. Density controls are needed for the number of animal units in a given area. Zones of use are needed for nutrient laden waters or litter so that the nutrients would be locally produced and locally used. Riparian buffer zones such as constructed wetlands are needed. Redundant nutrient barriers and linings should be required, especially in Karst areas.

(b) Response: The existing KPDES administrative regulations already address public notice and compliance matters. The integrator liability provision addresses how the producer and the processing facility are responsible for complying with environmental requirements related to the KPDES permit. With respect to liability insurance, the proposed administrative regulation does not propose to address that issue. Monitoring and reporting will be a condition of any KPDES permit issued.

With respect to density controls, please refer to response to comment #(126). As it relates to riparian buffer zones, constructed wetlands, and similar types of filter strips and buffer zones, those practices are not specifically addressed in the proposed administrative regulation. The Agriculture Water Quality Plan will address some of these aspects as well.

(135) Subject: Additional Requirements Needed

(a) Comment: Tom FitzGerald, Kentucky Resources Council

Intensive poultry production operations can be significant sources of air pollution, odors, surface and groundwater pollution, and can if improperly sited, constructed or operated, create a public nuisance. Careful control the management of poultry wastes is a matter of public health and sanitation concern because of the possibility of transmittal of disease. As with industrial-scale hog operations, excessive or inappropriate land application of wastes and wastewaters from poultry operations can cause surface water pollution since up to half of the nitrogen applied is not utilized and is transported through leaching, evaporation or runoff. Excess nutrient loading into streams results in nuisance algal blooms, hypoxia (low oxygen levels) and anoxia (complete loss of oxygen), causing fish kills, and creating costs in the form of diminished fisheries. Improper disposal of carcasses and litter can attract significant fly populations and create public health hazards through transmission of pathogens.

Broilers may produce up to one ton of litter per year for each 1000 birds, according to the Poultry Water Quality Consortium. 1000 caged layers produce nearly 2500 pound of manure per day, at an estimated volume of 50 cubic feet, making storage and interim management of the wastes a concern.

The environmental consequences of poultry production are potentially significant. A comprehensive regulatory strategy would address water withdrawal; characterization of wastewater, including oil and grease, biochemical oxygen demand, ammonia, phosphoric acid, pathogens (salmonella, streptococcus, coliform, etc.), and other pollutants; a plan for managing disposal of wastes and wastewaters associated with the operation; and design and location of ponds and lagoons for protection of groundwater resources.

Pollution prevention through input management has not but should be part of the strategy as well. Even in the best situation, poultry do not utilize anywhere near 100% of nutrients consumed. Apparent utilization, according to Kornegay at VPI & SU Department of Animal and Poultry Sciences, of most nutrients is less than 50% and less than 25% for many. Nutrient excretion can be significantly reduced, using one or more of several feeding and nutritional strategies. Such strategies include using microbial phytase in feed to improve the ability to use

organic P, thus lessening the need to add inorganic P to meet production goals. Use of phytase to break down phytate molecule and free the organic phosphorus also improves utilization of Ca, and Z.

The concentration of operations within a watershed is also a significant water quality issue that must be addressed through cumulative analysis of hydrologic impacts. Because of transportation costs associated with broiler production, most contract growers are concentrated within 25-50 mile radius of the hatchery, feed mill and live bird processing plant. A typical operation needs significant acreage for waste disposal at moderate rates, with a 1 million bird/week complex produces 65,000 tons litter a year, which at an application rate of four (4) tons per acre, would require a total of 16,250 acres of land.

The literature documents that poultry manure handling and land application generates dust and releases gases of concern from an air toxics or water pollution standpoint, including potentially harmful gases such as hydrogen sulfide, methane and ammonia. Poultry manure land application also releases nitrogen and phosphorus, calcium and sodium salts which are added to poultry feeds, suspended solids, microorganisms (some 150 disease causing organisms called pathogens, including bacteria, viruses fungi, protozoa, salmonella, listeria, coliform, ringworm, coccidiosis, ascaris), potassium, heavy metals and trace elements such as copper, selenium, nickel, lead, zinc. The cumulative loading of these constituents onto soils, and the leaching of these constituents from areas of land application because of the limited absorptive capacity of soils and build-up in soil over time, must be addressed in order to prevent water pollution.

(b) Response: See response #s(84) through (134).

(136) Subject: Roads

(a) Comment: Karol Welch, Magistrate, 1st District, Hopkins County

It is not fair that taxpayers must pay for torn up county roads because of over weight trucks. I hope the Cabinet will work to help our county government by getting contracts to protect our county roads.

(b) Response: The issue of overweight trucks, truck traffic, truck speed, uncovered trucks, and disrepair of county roads is not germane to the proposed ordinary administrative regulation. The Transportation Cabinet has jurisdiction over transportation.

(137) Subject: Roads

(a) Comment: Bernadine Edwards
Barbara Thomas

These roads are not big enough for a school bus and a large truck or a van and a large truck. This is unsafe.

(b) Response: See response #(136).

(138) Subject: Trucks

(a) Comment: Tammy Lamb

If processors want to haul overweight trailers, they should sign agreements with the county as they coal companies have.

(b) Response: The proposed administrative regulation does not address truck weight since that is beyond the scope of the proposed administrative regulation. See response #(136).

(139) Subject: Trucks

(a) Comment: Faye Lear
Uncovered trucks travel past my home with dust flying all over my property.
(b) Response: See response #(136).

(140) Subject: Trucks

(a) Comment: Bernie Miller
Our roads are not big enough for chicken trucks that hog the road and drive too fast.
(b) Response: The proposed administrative regulation does not address truck weight or speed limits since that is beyond the scope of this proposed administrative regulation. See response #(136).

(141) Subject: Trucks

(a) Comment: Ella King
I can sit inside my home and hear the chicken trucks speed by. I can't sleep at night with the trucks whizzing by. They go too fast. I've never seen a chicken truck pulled over. I've heard that a few tickets have been given but they were dismissed. That upsets me.
(b) Response: See response #s(136) and (140).

(142) Subject: Trucks

(a) Comment: Ritchie Shepherd
I have to deal with running my truck into a ditch late at night to let the chicken trucks go by on my narrow road.
(b) Response: See response #(136).

(143) Subject: Trucks

(a) Comment: Alfred O'Reilly
Larger trucks are a lot less dangerous because the load is spread out.
(b) Response: See response #(136).

(144) Subject: Community Conflict

(a) Comment: Debby Allen
Karol Welch, Hopkins County 1st District Magistrate
Charles Bates
We are arguing with our neighbors because corporations have allowed too many chicken houses on small properties; friends against friends so some can make money. The corporations do not care about the contract grower, the sustainability of the land, or quality of life in Kentucky.
(b) Response: The Cabinet notes the comment.

(145) Subject: Community Conflict

(a) Comment: Barbara Thomas
A lot of people are being misrepresented because they are scared and upset. People are afraid to speak out because they don't want to hurt other people's feelings.
(b) Response: The Cabinet notes the comment.

(146) Subject: Industrial Agriculture

(a) Comment: Aloma Dew, Sierra Club

Sue Anne Salmon
Dan Weatherspoon
Liz Natter, Democracy Resource Center
Heather Roe Mahoney, Democracy Resource Center

We support the independent family farmer, we do not support the industrial contract system which leaves the environmental responsibility on the grower, the neighbors, and the taxpayers of the Commonwealth of Kentucky. Kentucky's cheap labor, few regulations, abundant resources, rural and poor areas are being victimized. The corporations that are monopolizing agriculture, destroying family farms, property values, quality of life, and rural communities must be held responsible for the economic, health, social, and environmental problems they bring to our rural communities. Protect Kentucky's family farms and rural economies.

(b) Response: The Cabinet notes the comment. See also response #(15).

(147) Subject: Industrial Agriculture

(a) Comment: Judith D. Petersen, Kentucky Waterways Alliance
Charles Stanley
Charles Bates

CAFOs are a different type of farming, they are an industrial type of agricultural activity. CAFO operations produce an enormous volume of animal waste, manure, litter, and dead animals, all of which require proper storage, handling, and disposal if we are to safeguard Kentucky's water quality and Kentuckians' quality of living.

(b) Response: The Cabinet notes the comment. The proposed ordinary administrative regulation is intended to protect human health and the environment.

(148) Subject: Industrial Agriculture

(a) Comment: Dan Weatherspoon
Hunter Roberts

Kentucky Farm Bureau is a paid lobbyist for corporate integrators. CAFOs are a small percent of our rural residents and farms. Farm Bureau is motivated by big corporate holdings and investments. We do not want Farm Bureau blocking strong regulation of mega industrial CAFOs.

(b) Response: The comment is noted.

(149) Subject: Industrial Agriculture

(a) Comment: Tom FitzGerald, Kentucky Resources Council

Intensive livestock operations are a component of a system of industrial production through an integrated structure of companies, investors and contractors. Under the contract model, farm-level control over agricultural production decisions is replaced by corporate control through the contracts, relegating farm-level workers to the role of hired labor. The environmental and human health costs associated with these industrial scale operations and the management of the wastes and wastewaters generated by these facilities must be fully accounted for by the facilities and those who control the production decisions. If environmental damage occurs, if neighbors lose value and enjoyment of their homes and properties, if the communities suffer pollution, it should not be the contract farmer that bears the entire cost of remedying whatever problems might arise. Integrator liability is essential to protect our farmers who are fighting to stay on the land but are placed in the position of having to pay all the costs involved in meeting environmental and legal requirements.

(b) Response: See response #(15).

(150) Subject: Attracting Clean Industry

(a) Comment: Susan Crosswait
Aloma Dew, Sierra Club
Charles Stanley

Attracting good, clean industry will be hard if Western Kentucky suffers the same detrimental effects that other states have where the pork and chicken industries have moved in with weak or no regulation.

(b) Response: The Cabinet notes the comment.

(151) Subject: Competitive Disadvantage

(a) Comment: Dennis Liptrap, IPKY

Investment in livestock facilities is a long term investment with 10-20 years life span. The ability to alter business plans and form alliances with other entities, neighbors, or integrated food producers may be more important in the future than the present. If Kentucky is the only state in the U.S. to require co-permitting and shared liability, very few entities will be available to form alliances with. If you represented a food producer who was placing livestock with contract operators, would you place livestock in Kentucky where you were required to accept liability for activities not under your direct control? If you were a banker, would you lend money to an independent producer to construct facilities whose income stream can be interrupted by the necessity for re-permitting with every change in alliances or business plan? These regulations eliminate choices and available options for Kentucky farmers at a time when Kentucky farmers need every option to find a replacement for lost income.

(b) Response: See response #(15). The Cabinet is very aware of the diversification that Kentucky farmers are undergoing in light of income lost from tobacco, along with other factors. The proposed ordinary administrative regulation does not prohibit Kentucky farmers from operating.

(152) Subject: Competitive Disadvantage

(a) Comment: Sam Moore, Kentucky Farm Bureau

The Cabinet's co-permitting requirement is devastating to Kentucky farmers at all levels. Some business people in the poultry and cattle industries have limited their contracts with Kentucky farmers or are not doing business here at all. Because no other state requires it, co-permitting puts Kentucky farmers at a serious market disadvantage.

(b) Response: Based upon federal mandate, all states should already have the authority, or will need to adopt similar regulations on CAFO's. See also response #(15).

(153) Subject: Competitive Disadvantage

(a) Comment: Kelly Thurman, Kentucky Farm Bureau and Kentucky Milk Producers Association

These regulations will have far reaching effects on animal agriculture and crop agriculture in this state for years to come. These regulations would only affect producers in Kentucky, restricting our ability to do business with others out of the state. The next generation of dairy producers will need to have options to increase the size of their dairies in order to become economically viable.

We will be required to find other sources of income to replace the income which tobacco produced in the past. We are seeing fewer operations and fewer cattle.

(b) Response: See response #(152). The Cabinet is aware of the expanding nature of individual farm size in Kentucky, and across the nation. For a dairy or beef operation to be defined as a CAFO, generally there would need to be more than 700 dairy or 1000 beef, respectively, confined on the operation. Some beef operations in Kentucky, for example, maintain more than 1000 head of beef, but do not do so in a confined manner. The proposed ordinary administrative regulation is not designed so as to prevent future expansions. Regulatory requirements for CAFO's are only those needed to protect human health and the environment.

(154) Subject: Competitive Disadvantage

(a) Comment: Truman Burden

If these regulations are implemented, I'm going to be at a disadvantage to the farmers in other states.

(b) Response: See response #(152).

(155) Subject: Competitive Disadvantage

(a) Comment: Rebeckah Freeman, Kentucky Farm Bureau Federation

By making Kentucky's regulation more stringent as to integrator liability than required by EPA or any other state, you have placed our farmers at a competitive disadvantage when competing with farmers in other states. Prohibitively restrictive siting criteria make it virtually impossible for many Kentucky farmers to expand and remain economically viable.

(b) Response: See response #s(15) and (152).

(156) Subject: Local Economy

(a) Comment: Truman Burden

This state has spent millions upon millions of dollars to bring this industry in. We've got a lot of tax dollars at work and providing the industry in our county has made a tremendous difference. It's provided jobs. Pay close attention to keeping they playing field level so agri-business in this state can be competitive. Let's work together to find a solution.

(b) Response: The Cabinet notes the comment. The Commonwealth has invested a tremendous amount of money into expanding agriculture. Along with that investment, the Commonwealth must similarly ensure that the growth in the agricultural industry be done in such a manner that human health and environment are protected. The proposed ordinary administrative regulation has been developed with those concerns in mind as it relates to CAFOs.

(157) Subject: Quality of Life

(a) Comment: Jerry W. Bean

Due to the spreading of chicken litter on farmland three miles or more away, we have had to stay inside or hold our breath at times. I do not want them close to our community.

(b) Response: The Cabinet notes the comment.

(158) Subject: Quality of Life

(a) Comment: Dorothy Campbell

Two chicken houses about 800 feet from our home has changed our life and the enjoyment of our home. Outdoor events such as fishing and swimming in our lake or simply sitting or entertaining on the patio is limited.

(b) Response: The Cabinet notes the comment.

(159) Subject: Quality of Life

(a) Comment: Tammy Lamb

We live 1,500 feet from eight chicken houses and it stinks! Sometimes the smell is so bad that we gag when we go outside. There are feathers floating in the air around our home. The noise from the fans, alarms, and trucks has kept us awake numerous times. We can no longer sit outside and watch the deer graze in our fields. We can't fish in our pond, mow the yard, or work in our garden.

(b) Response: The Cabinet notes the comment.

(160) Subject: Quality of Life

(a) Comment: Sara Shelton

Guy Hardin, State Property Rights Committee

Ms. Shelton has been limited in the use of her property because there have been 42 or more chicken houses constructed within five miles of her home. This industry has created many needed jobs but the price is too high. Since Tyson took over the operation of the growing houses, there is a very offensive odor that at times has taken my breath. There has been a massive invasion of flies. It is hard to perform necessary maintenance on our property. Ms. Shelton can no longer enjoy the outside, my yard, or porch that used to be a very important part of her life.

(b) Response: The Cabinet notes the comment.

(161) Subject: Quality of Life

(a) Comment: Barbara Weatherspoon

I live about ½ mile from 12 poultry houses. The smell is assaulting and disgusting. I have seen litter being hauled away from poultry barns being scattered all over the road. Owners living out of state don't mind assaulting their neighbors with the stench. I want more for my children. I want my children to grow up respecting the rights of others.

(b) Response: The Cabinet notes the comment.

(162) Subject: Quality of Life

(a) Comment: Charles Bates

Bernadine Edwards

I am not able to enjoy my life and property due to the flies, stink, rats, mice, snakes, noise, dead chickens in my yard and road. Family get-togethers are ruined.

(b) Response: The Cabinet notes the comment.

(163) Subject: Quality of Life

(a) Comment: Ella King

Chicken farms have affected my quality of life. I live within three miles of 82 chicken farms. I can no longer have family reunions at my home due to the odor. We can no longer raise our windows and have air in our home at times due to the odor. I have had chicken litter dumped 100

feet from my front door and my bedroom windows. I can not work in my flower garden because of flies biting me and even drawing blood. I cannot sit in my yard.

(b) Response: The Cabinet notes the comment.

(164) Subject: Property Values

(a) Comment: Jerry W. Bean

Who pays when property values are ruined by odor from chicken and hog farms? The almighty dollar has ruined families and broken friendships.

(b) Response: Some studies have shown that the existence of a CAFO increases value of property, while others have shown that property value is decreased.

(165) Subject: Property Values

(a) Comment: Dorothy Campbell

Two chicken houses are located about 800 feet from our home. The value of our property has dropped and we probably couldn't sell it.

(b) Response: See response #(164).

(166) Subject: Property Values

(a) Comment: Faye Lear

I am ready to leave this area but am unable to sell our home. No one would be interested in buying our home so close to this large scale chicken operation.

(b) Response: See response #(164).

(167) Subject: Property Values

(a) Comment: Dan Weatherspoon

The stink has ruined our sales prospects for beautiful building sites around our small lake. This has ruined our retirement income potential from our farm.

(b) Response: See response #(164).

(168) Subject: Property Values

(a) Comment: Polly H. Young

Nearby property owners should be compensated for damage resulting from these operations. If these companies or farmers wish to locate in Kentucky, they should purchase the lands or homes of affected neighbors at fair market value.

(b) Response: See response #(164).

(169) Subject: Property Values

(a) Comment: Howard McGregor

My orchard has been inundated by mice for the third summer. I cannot operate my orchard with mice running through it when the fruit is ripe. It is too late for my orchard. One CAFO has put me out of business. These mice run out and starve to death or eat each other. I shovel them out of my yard where my grandchildren play every day. I complained to Hudson Food and they guaranteed that I would never have another mouse problem in my orchard. Last year they were not as bad but this year they're horrible beyond belief.

(b) Response: See response #(44).

(170) Subject: Property Values

(a) Comment: Ritchie Shepherd

I have had a lifelong dream to raise produce from my garden and feed the hungry people in my community and my relatives. I had already signed a contract to buy my house before knowing there were chicken houses on the road. The mice, gnats, and other pests and insects brought in by the chicken houses have ruined my garden and my chance to sell produce to the public. My seven cats can not take care of the mice problem.

I would like to see the removal of the chicken houses. They should be in a remote area away from the community. It puts a mark on the entire area. No one wants to buy property here to build a beautiful house on only to be confined to the inside because of the stench.

(b) Response: See response #s(44), (101), (121), and (164).

Summary of Statement of Consideration and Action Taken

The Natural Resources and Environmental Protection Cabinet (NREPC), Division of Water received verbal comments from 34 individuals or organizations and written comments from 123 individuals or organizations on the proposed administrative regulation. 132 people attended the public hearing on June 29, 2000 in Madisonville, Kentucky.

The Cabinet reviewed the comments and, in response, is filing this Statement of Consideration.

The proposed administrative regulation is scheduled to be reviewed by the Legislative Research Commission's Administrative Regulation Review Subcommittee at its August 1, 2000 meeting and by the Interim Joint Committee on Agriculture and Natural Resources on August 28, 2000.